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STATE OF CONNECTICUT *v.* JAMES T. WARD
(SC 18898)

Rogers, C. J., and Norcott, Palmer, Zarella, McLachlan, Eveleigh and
Harper, Js.*

*Argued March 19—officially released September 18, 2012***

Pamela S. Nagy, special public defender, for the
appellant (defendant).

Bruce R. Lockwood, senior assistant state's attorney,
with whom, on the brief, were *Patricia M. Froehlich*,
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attorney, for the appellee (state).

Opinion

EVELEIGH, J. The defendant, James T. Ward, was convicted, following a jury trial, of, inter alia,¹ sexual assault in the first degree in violation of General Statutes § 53a-70 (a) (1).² The defendant appeals³ from the judgment of conviction, claiming that the trial court improperly denied his motion to dismiss because the statute of limitations applicable to the offense had expired and had not, as the trial court concluded, been tolled pursuant to General Statutes (Rev. to 1987) § 54-193 (c) because he fled the state.⁴ The defendant's principal assertion is that he did not flee the state because he was returning to his home in Massachusetts after the commission of the crime. We disagree, and accordingly, affirm the judgment of the trial court.

The jury reasonably could have found the following facts. On November 21, 1988, the defendant sexually assaulted the victim⁵ at her home in Killingly. On that date the victim, a married twenty year old woman, was home alone. The house, located in a rural area near Route 101, was a small cape-style building with an unfurnished second floor and exterior doors located in the kitchen and living room. At approximately 11:45 a.m., while the victim was cleaning the house, she heard the kitchen doorbell ring. When the victim opened the kitchen door, she expected to see her neighbor and close friend who frequently visited. Instead, she saw the defendant at the door, whom she had never seen before. The defendant was approximately twenty-four years of age with brown shoulder length hair. He was approximately five feet and eleven inches in height and weighed approximately 190 pounds. In contrast, the victim was a little more than five feet tall and weighed approximately 100 pounds. The defendant told the victim that his car had overheated and he asked for some water. The defendant also asked if he could use the bathroom. The victim agreed. While the defendant was using the bathroom, the victim filled a large glass jar with water from the kitchen sink. When the defendant returned from the bathroom, he stated that he might need to use the telephone. The only telephone in the house was located in the living room near the hallway. After deciding not to use the telephone, the defendant grabbed the jar of water that the victim had left on the kitchen counter and left. When the victim looked outside to see where the defendant had gone, she saw him outside pacing. The victim then resumed cleaning.

Approximately five minutes later, the kitchen doorbell rang again. When the victim opened the door, she saw the defendant standing there with the empty jar. He asked for more water. The victim took the empty jar, left the defendant standing outside, closed the door, but did not lock it, and went to the sink to fill the jar. As she was filling the jar at the kitchen sink, the defendant pushed open the kitchen door and quickly

came at her. The defendant grabbed a metal knife sharpening tool from the butcher block of knives on the kitchen counter. He then wrapped his arms around the victim and held the knife sharpening tool to her neck. He told the victim, "if you don't do . . . what I tell you to do, I'm going to kill you. And if you do do what I say, then everything will be okay." The defendant started to drag the victim toward the hallway. The victim could not escape because the defendant was significantly larger and held her "very tightly." While holding the metal knife sharpening tool against her neck, the defendant dragged and pushed the victim down the hallway into the master bedroom. The defendant pushed the victim down onto the bed and unbuttoned her shirt. He then took off the victim's pants and underwear and threw them onto the floor. The victim continued to plead for him to stop. The defendant pulled the victim from the bed onto the floor, then made the victim lie on her back with one of her hands over her head. The defendant laid on top of the victim and held the knife sharpening tool to her neck. He then stuck his tongue in the victim's mouth and tried to kiss her. Next, he stuck his tongue inside the victim's vagina. The defendant then took his pants off, got on top of the victim, and rubbed his penis against her vagina. After that, he ejaculated on the victim's stomach. The defendant then got up, put on his pants and left the house. The victim estimated that she was in the bedroom with the defendant for approximately "[ten] to [fifteen] minutes."

A few minutes after the defendant had left the room, the victim put her clothes on and cleaned herself in the bathroom. She then proceeded into the kitchen and discovered that the defendant had left with the knife sharpening tool and water jar. She then telephoned her neighbor, who arrived shortly thereafter and found the victim crying "like a little baby." Thereafter, the town police were summoned and obtained a statement from the victim. In her statement, the victim indicated that, after the defendant had finished sexually assaulting her, he ran out the door. The victim also indicated in her statement that when she looked out the window to see if the defendant was gone, she saw him running across the road.

As part of the investigation, the police took the victim's clothing and photographed her home. The police also made a composite sketch based upon the victim's description of the defendant. In addition, the police obtained blood and DNA samples from the victim. The day after the incident, the police canvassed the area and located two witnesses who had seen the defendant. One witness saw a man carrying a big glass water jug standing behind a brown colored station wagon with wood paneling. Another motorist told the police that he had seen a large cream colored car on the side of the road with a man walking away from the car carrying a watering can. The car had an out-of-state license plate.

Unknown to the Connecticut state police at the time, on October 25, 1988, approximately one month before the defendant attacked the victim, the Milton, Massachusetts, police department had issued a citation to the defendant for improper passing. The vehicle described in the citation was a 1985 Oldsmobile station wagon, color white, registered to E. L. Cooney, Inc. In 1988, the defendant worked as a delivery person for E. L. Cooney, Inc., a food brokerage company located in Braintree, Massachusetts. The company provided the defendant with a company car because he traveled for them throughout New England, including Connecticut, providing food samples and assisting with food shows. One of the company's clients was the Killingly school system.

The Connecticut state police closed the sexual assault case in March, 1990. Subsequently, on June 2, 2005, the state police reopened the case after receiving information indicating that the defendant, who was residing in Quincy, Massachusetts, might have been involved in the crime. Pursuant to a search warrant, the state police obtained an oral swab and palm prints from the defendant. This evidence was submitted to the Connecticut state forensic laboratory.

A subsequent examination of the victim's blouse and sweater conducted at the state forensic laboratory detected the presence of semen. In 2006, DNA testing and comparison with known samples from the victim, her husband and the defendant revealed that the defendant's DNA profile was consistent with the DNA profile of the semen on the victim's clothing. The likelihood that someone else had the same DNA profile was less than one in three hundred million.

Thereafter, in early 2007, the state police obtained an arrest warrant for the defendant. On August 17, 2007, the police executed the warrant, arresting the defendant at the Norfolk County courthouse in Quincy, Massachusetts, and transporting him to Connecticut. The defendant was charged with one count of sexual assault in the first degree in violation of § 53a-70 (a) (1) and one count of kidnapping in the first degree in violation of General Statutes (Rev. to 1987) § 53a-92 (a) (2) (A).

On April 23, 2008, while being held in a Connecticut department of correction facility, the defendant telephoned his mother. During the conversation, the defendant stated: "Like I said, I've done everything I can in my power to make sure that I don't commit crimes like this again, and I haven't." The evidence presented at trial indicates that the defendant resided in Massachusetts from 1985 to 2007 and also established that he had traveled to Connecticut as part of his job at E. L. Cooney, Inc.

Prior to trial, the defendant filed a motion to dismiss the charge of sexual assault in the first degree on the

ground that it was barred by the five year statute of limitations. See General Statutes (Rev. to 1987) § 54-193 (b). After an evidentiary hearing, the trial court issued a memorandum of decision denying the defendant's motion to dismiss. That court concluded, inter alia, that § 54-193 (c) operated to toll the statute of limitations because the state had proven that the defendant fled from the state immediately after the commission of the crime and that he resided outside of the state during the period of limitation.

Thereafter, the defendant was tried by a jury. The defendant elected not to testify at trial. As to the charge of sexual assault in the first degree, defense counsel conceded during closing argument that the defendant sexually assaulted the victim. Defense counsel asserted, however, that the five year statute of limitations period had run and that the state had failed to prove that the defendant had fled the jurisdiction, which would have tolled the statute of limitations. The jury found the defendant guilty of sexual assault in the first degree and the trial court sentenced the defendant to a twenty year term of imprisonment. This appeal followed. Additional facts and procedural history will be set forth as necessary.

I

On appeal, the defendant first claims that the trial court improperly denied his motion to dismiss the sexual assault charge because prosecution for that offense was barred by the five year statute of limitations set forth in § 54-193 (b). Specifically, the defendant asserts that the trial court improperly concluded that he had fled the state by returning to his home state of Massachusetts after the commission of the crime and therefore improperly tolled the statute of limitations pursuant to § 54-193 (c). In response, the state asserts that the trial court properly concluded that the statute of limitations was tolled because the defendant fled from and resided out of this state. We agree with the state.

We begin by setting forth the applicable standard of review and certain legal principles that govern a statute of limitations defense. Statutes of limitation are generally considered "an affirmative defense which must be proved by the defendant by a preponderance of the evidence. . . . An affirmative defense is presented in the orderly course of a criminal trial after the prosecution has presented its case-in-chief." (Citations omitted.) *State v. Coleman*, 202 Conn. 86, 90–91, 519 A.2d 1201 (1987). Practice Book § 41-8 (3)⁶ provides, however, that a defendant may also raise the statute of limitations defense in a pretrial motion to dismiss. "Because a motion to dismiss effectively challenges the jurisdiction of the court, asserting that the state, as a matter of law and fact, cannot state a proper cause of action against the defendant, our review of the court's

legal conclusions and resulting denial of the defendant's motion to dismiss is de novo." *State v. Rivers*, 283 Conn. 713, 723–24, 931 A.2d 185 (2007). Once the defendant's burden has been met, the burden shifts to the state to prove by a preponderance of the evidence that the statute of limitations was tolled. See *United States v. Florez*, 447 F.3d 145, 149–50 (2d Cir.) (majority of jurisdictions analyzing whether federal statute of limitations applies puts burden of proof on government to prove by preponderance of evidence that defendant fled from justice in order to toll time period), cert. denied, 549 U.S. 1040, 127 S. Ct. 600, 166 L. Ed. 2d 445 (2006). "In determining whether the evidence proffered by the state is adequate to avoid dismissal, such proof must be viewed in the light most favorable to the state." *State v. Kinchen*, 243 Conn. 690, 702, 707 A.2d 1255 (1998). As the United States Court of Appeals for the Second Circuit stated in *Florez*, "we review de novo [the trial court's] legal conclusion that these facts establish flight as specified by the statute." *United States v. Florez*, *supra*, 150.

The question of whether the trial court properly denied the defendant's motion to dismiss when it concluded that the defendant's actions constituted flight for purposes of § 54-193 (c) presents an issue of statutory construction over which we exercise plenary review. See *State v. Salamon*, 287 Conn. 509, 529, 949 A.2d 1092 (2008). In construing a statute, the first objective is to ascertain the intent of the legislature. *Id.* "In other words, we seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of the case, including the question of whether the language actually does apply." (Internal quotation marks omitted.) *Picco v. Voluntown*, 295 Conn. 141, 147, 989 A.2d 593 (2010). General Statutes § 1-2z⁷ directs this court to first consider the text of the statute and its relationship to other statutes to determine its meaning. Only if we determine that the statute is not plain and unambiguous and does not yield absurd or unworkable results may we consider extratextual evidence of its meaning, such as "the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter" (Internal quotation marks omitted.) *Thomas v. Dept. of Developmental Services*, 297 Conn. 391, 399, 999 A.2d 682 (2010). "The test to determine ambiguity is whether the statute, when read in context, is susceptible to more than one reasonable interpretation." (Internal quotation marks omitted.) *Weems v. Citigroup, Inc.*, 289 Conn. 769, 779, 961 A.2d 349 (2008). "We presume that the legislature did not intend to enact meaningless provisions. . . . [S]tatutes must be construed, if possible, such that no clause, sentence or word shall be superfluous, void or insignificant" (Internal quotation marks omitted.) *Housatonic Railroad Co. v. Commis-*

sioner of Revenue Services, 301 Conn. 268, 303, 21 A.3d 759 (2011).

“[W]hen the statute being construed is a criminal statute, it must be construed strictly against the state and in favor of the accused.” *State v. Cardwell*, 246 Conn. 721, 739, 718 A.2d 954 (1998). “[C]riminal statutes [thus] are not to be read more broadly than their language plainly requires and ambiguities are ordinarily resolved in favor of the defendant.” (Internal quotation marks omitted.) *State v. Kirk R.*, 271 Conn. 499, 510, 857 A.2d 908 (2004). Rather, “penal statutes are to be construed strictly and not extended by implication to create liability which no language of the act purports to create.” (Internal quotation marks omitted.) *State v. Woods*, 234 Conn. 301, 308, 662 A.2d 732 (1995). Further, if, after interpreting a penal provision, there remains any ambiguity regarding the legislature’s intent, the rule of lenity applies. “It is a fundamental tenet of our law to resolve doubts in the enforcement of a Penal Code against the imposition of a harsher punishment.” (Internal quotation marks omitted.) *State v. Hinton*, 227 Conn. 301, 317, 630 A.2d 593 (1993).

In accordance with § 1-2z, we begin our analysis with the text of the statute. General Statutes (Rev. to 1987) § 54-193 (c) provides: “If the person against whom an indictment, information or complaint for any of said offenses is brought has *fled from and resided out of this state* during the period so limited, it may be brought against him at any time within such period, during which he resides in this state, after the commission of the offense.” (Emphasis added.) Because the term “fled” is not defined by statute, “General Statutes § 1-1 (a) requires that we construe the term in accordance with the commonly approved usage of the language. . . . If a statute or regulation does not sufficiently define a term, it is appropriate to look to the common understanding of the term as expressed in a dictionary.” (Citation omitted; internal quotation marks omitted.) *Jim’s Auto Body v. Commissioner of Motor Vehicles*, 285 Conn. 794, 808, 942 A.2d 305 (2008). The word “flee” is defined alternatively as “to run away often from danger or evil” and “to hurry toward a place of security” Merriam-Webster’s Collegiate Dictionary (10th Ed. 1993).

The defendant contends that the trial court improperly determined that he “fled from and resided out of this state”; General Statutes (Rev. to 1987) § 54-193 (c); because the state did not present any evidence to show that he was aware of a criminal investigation against him and that he fled in order to avoid prosecution. In response, the state contends that the term fled does not require an intent to avoid arrest or prosecution and that any absence from the jurisdiction, regardless of intent, tolls the statute of limitations. We agree with the state that the plain language of § 54-193 (c) does

not require a defendant to leave the state with the intent of avoiding prosecution. It is axiomatic that when the legislature intends to predicate the application of a statute on the presence of a particular mental state, it does so by including specific language that describes the intent or knowledge required. See, e.g., General Statutes § 53a-5 (“‘with intent to defraud’ and ‘knowing it to be false’”). “It is not the function of courts to read into clearly expressed legislation provisions which do not find expression in its words” (Internal quotation marks omitted.) *State v. Whiteman*, 204 Conn. 98, 103, 526 A.2d 869 (1987); see also *Windels v. Environmental Protection Commission*, 284 Conn. 268, 299, 933 A.2d 256 (2007) (legislature knows how to convey its intent expressly). Section 54-193 (c) contains no mention of a requirement that the defendant must have fled for the purpose of avoiding prosecution. Thus, the plain language of § 54-193 (c) supports the conclusion that it does not require that a defendant has fled with the intent to avoid prosecution.

Furthermore, this construction of the term fled under § 54-193 (c) is bolstered by our reading of the same statutory term contained in General Statutes § 54-158, the Uniform Criminal Extradition Act. “In interpreting a statute, [r]elated statutory provisions . . . often provide guidance in determining the meaning of a particular word” (Internal quotation marks omitted.) *State v. Ehlers*, 252 Conn. 579, 590, 750 A.2d 1079 (2000). The extradition statutory scheme and the statute of limitations tolling provision are related in that both concern defendants who have committed crimes in Connecticut, but reside out of this state. Under the extradition statutory scheme, “[t]he term ‘fugitive from justice’ is used to describe a person who, having been charged with the commission of a crime in one state, has ‘fled from’ that state to another state within the meaning of the act.” *Clark v. Commissioner of Correction*, 281 Conn. 380, 383 n.4, 917 A.2d 1 (2007). “One need not necessarily have left the state for the purpose of avoiding arrest or prosecution to be a fugitive from justice. . . . It is enough if, after committing a crime in one jurisdiction, the perpetrator departs and is later found in another.” (Internal quotation marks omitted.) *Id.*, 395. Thus, under § 54-158, the term fled does not require an intent to avoid arrest or prosecution.

We note, however, that the common usage of the term fled connotes a meaning that a defendant is running away from something. The term fled as we have ascertained from the dictionary definition means to run away from danger—in the context of § 54-193 (c), we understand this term to mean investigation—and hurry toward a place of security—in the context of § 54-193 (c), we understand this term to mean outside of the jurisdiction. We conclude, therefore, that § 54-193 (c) may toll the statute of limitations when a defendant absents himself from the jurisdiction with reason to

believe that an investigation may ensue as the result of his actions. Certainly, the defendant herein, as a result of his conduct in the victim's home, had reason to believe that an investigation would ensue.

This construction of fled promotes the interests sought to be protected by the tolling provision with reference to the practical realities of law enforcement. "Investigation of crimes is easier for law enforcement officials when people central to the incident, and who may have vital information, are located within the state." *State v. Sher*, 149 Wis. 2d 1, 14, 437 N.W.2d 878 (1989). A tolling provision that applies to nonresidents who commit crimes in Connecticut and then return to their home states, regardless of their intent, legitimately addresses the practical problems that Connecticut police officers face in identifying and apprehending nonresident criminals.

Further, this construction of the tolling provision, as applied to the present case, does not conflict with the general purpose of statutes of limitation. Statutes of limitation "are intended to foreclose the potential for inaccuracy and unfairness that stale evidence and dull memories may occasion in an unduly delayed trial." (Internal quotation marks omitted.) *State v. Coleman*, supra, 202 Conn. 91. Statutes of limitation "may also have the salutary effect of encouraging law enforcement officials promptly to investigate suspected criminal activity." (Internal quotation marks omitted.) *State v. Skakel*, 276 Conn. 633, 677, 888 A.2d 985, cert. denied, 549 U.S. 1030, 127 S. Ct. 578, 166 L. Ed. 2d 428 (2006). These concerns of accuracy, unfairness and dilatory police investigations hardly exist in the present case, given: (1) the DNA evidence identifying the defendant as the perpetrator; (2) defense counsel's acknowledgment during closing argument that the defendant sexually assaulted the victim; and (3) the prompt and extensive police search at the time of the offense. Accordingly, we conclude that applying § 54-193 (c) to toll the statute of limitations in the present case does not frustrate the purposes of statutes of limitation.

We reject the defendant's argument that construing § 54-193 (c) in a manner that does not require an intent to avoid prosecution renders the term fled meaningless. As we have explained previously herein, a defendant must absent himself from the jurisdiction with reason to believe that an investigation will ensue as the result of his actions in order for there to be an application of the tolling provision. There may, indeed, be situations in which a person is traveling through Connecticut and leaves the jurisdiction without reason to believe that an investigation would ensue as a result of his or her actions. For instance, if a motorist was driving on a dark road at night and hit what he reasonably believed to be a bump in the road without stopping, only later to learn that he had left the scene of an accident, he

may not have fled the jurisdiction within the meaning of § 54-193 (c). We are confident that our interpretation of the statute does not render the term fled meaningless.

To the extent that the defendant claims that, in deciding the motion to dismiss, the trial court improperly required the state to meet its burden of proving that the defendant fled by a probable cause standard rather than the more stringent preponderance of the evidence standard, any alleged impropriety was harmless in view of the jury's verdict of guilty on the sexual assault charge, which charge the jury had to find proven beyond a reasonable doubt. The jury was also instructed that the state had to prove the tolling provision by a fair preponderance of the evidence, which is a higher standard than the probable cause standard used by the trial court in evaluating the motion to dismiss. See *State v. Amerson*, 129 Idaho 395, 400, 925 P.2d 399 (1996) ("any error connected with the magistrate's decision to deny [the defendant's] motion to dismiss essentially became moot upon the jury's verdict finding [the defendant] guilty beyond a reasonable doubt"), cert. denied, 521 U.S. 1123, 117 S. Ct. 2519, 138 L. Ed. 2d 1020 (1997).

In the present case, it is undisputed that the defendant returned to Massachusetts after the commission of a crime and continued to reside there until his arrest more than twenty years later. Accordingly, we conclude that the trial court properly denied the defendant's motion to dismiss because it properly concluded that the state had shown probable cause that the statute of limitations had been tolled.

II

We next review the defendant's claim that the trial court improperly denied his motion for a judgment of acquittal because the state failed to prove that there was sufficient evidence that he fled the state. Specifically, the defendant contends that the state failed to provide any evidence that the defendant was aware of an investigation or knew that the victim had telephoned the police. Further, the defendant claims that the evidence established that he was not taking evasive measures in order to avoid prosecution because he returned to Connecticut regularly after the commission of the crime as part of his duties at work. In response, the state asserts that the trial court properly denied the defendant's motion for a judgment of acquittal because the record contains evidence demonstrating that he left the state after the commission of the crime and resided in Massachusetts for more than twenty years. We conclude that the trial court properly denied the defendant's motion for a judgment of acquittal because the state presented adequate evidence that the defendant left the state with reason to believe an investigation would ensue as a result of his actions.

The following additional facts and procedural history

are necessary to our resolution of this claim. After the state rested, and again after the jury returned its verdict, the defendant moved for a judgment of acquittal, claiming that the state had not presented sufficient evidence to show that the defendant had fled the state in order to avoid prosecution. The trial court denied these motions.

“In reviewing a sufficiency of the evidence claim, we apply a two-part test. First, we construe the evidence in the light most favorable to sustaining the verdict. Second, we determine whether upon the facts so construed and the inferences reasonably drawn therefrom the jury 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 jury’s verdict of guilty.” (Citation omitted; internal quotation marks omitted.) *State v. Jackson*, 257 Conn. 198, 204–205, 777 A.2d 591 (2001); *State v. Silva*, 285 Conn. 447, 459, 939 A.2d 581 (2008); *State v. Aloï*, 280 Conn. 824, 842, 911 A.2d 1086 (2007).

As we explained in part I of this opinion, § 54-193 (c) requires the state to prove only that the defendant left the state with reason to believe that an investigation would ensue as a result of his actions, and that the defendant resided elsewhere. As we also explained in part I of this opinion, it is undisputed that the defendant left the state after the commission of the crime and resided in Massachusetts for over twenty years until he was arrested. Indeed, as the trial court summarized: “In this case the evidence, as [the state] pointed out, shows that when the defendant completed the sexual assault, he immediately got up and ran from the room, ran out the back door, and across the backyard to his car which was parked out on Route 101 and he then drove from the scene.” Accordingly, we conclude that, when viewed in the light most favorable to sustaining the verdict, there was sufficient evidence for the jury to conclude that the statute of limitations was tolled.⁸

III

The defendant’s final claim is that the trial court’s instructions on the statute of limitations defense were misleading. First, the defendant claims that the trial court improperly failed to include language in its instruction requiring the jury to find that the defendant knew of an investigation and that the police were looking for him. Second, the defendant asserts that the trial court improperly failed to include in the instructions language stating that his mere return to his residence in Massachusetts did not constitute flight under § 54-193 (c). Third, the defendant claims that the trial court improperly failed to include the language he requested that evidence of his return to Connecticut for work

during the intervening twenty years demonstrates that he did not flee. Fourth, the defendant claims that the trial court misled the jury by instructing that it need not find that the defendant had left the state “solely and exclusively to avoid arrest and prosecution.” In response, the state asserts that the trial court’s instructions did not mislead the jury. We agree with the state.⁹

“Our standard of review for claims of instructional impropriety is well established. The principal function of a jury charge is to assist the jury in applying the law correctly to the facts which they might find to be established When reviewing [a] challenged jury instruction . . . we must adhere to the well settled rule that a charge to the jury is to be considered in its entirety . . . and judged by its total effect rather than by its individual component parts. . . . [T]he test of a court’s charge is . . . whether it fairly presents the case to the jury in such a way that injustice is not done to either party In this inquiry we focus on the substance of the charge rather than the form of what was said not only in light of the entire charge, but also within the context of the entire trial.” (Internal quotation marks omitted.) *State v. Lawrence*, 282 Conn. 141, 179, 920 A.2d 236 (2007).

In the present case, taking the instructions as a whole, we cannot conclude that the jury was misled. First, as we explained in part I of this opinion, § 54-193 (c) does not require the defendant to leave the jurisdiction with an intent to avoid prosecution, or that the defendant must know of an investigation, or know that the police are looking for him. Therefore, we cannot conclude that it was improper for the trial court not to include language that required the jury to find that the defendant knew of an investigation and that the police were looking for him.

Second, we reject the defendant’s claim that the trial court improperly refused to include the requested language that his mere return to Massachusetts did not constitute flight under the statute. Moreover, the trial court was within its discretion to deny the defendant’s request to include such language in its instructions because it was a request for the court to comment on the evidence. This court has previously held that the decision whether to comment on the evidence presented at trial is within the sound discretion of the trial court. *State v. Lemoine*, 233 Conn. 502, 512, 659 A.2d 1194 (1995).

Similarly, the defendant’s request for the trial court to instruct the jury that his return to Connecticut for work during the intervening twenty years demonstrates that he did not flee also was a request for the court to comment on the evidence. As such, it was also within the trial court’s discretion to deny this request. *Id.* Indeed, we reject the notion that any subsequent conduct either dissipates the actions of the defendant on

the day of the crime or reduces the effect of his continued residence outside of Connecticut.

Finally, we do not accept the defendant's argument that the court misled the jury by instructing it as follows: "To find that the defendant fled the state with the intent to avoid arrest and prosecution it is not necessary for you to find that he fled the state solely and exclusively to avoid arrest and prosecution." As we have explained previously herein, the trial court's instruction in this regard was actually more favorable to the defendant than the one required by § 54-193 (c), in that we conclude § 54-193 (c) does not require any finding of intent to avoid arrest or prosecution.

The judgment is affirmed with respect to the defendant's conviction of sexual assault in the first degree.

In this opinion the other justices concurred.

* The listing of the justices reflects their seniority status on this court as of the date of oral argument.

** September 18, 2012, the date that this decision was released as a slip opinion, is the operative date for all substantive and procedural purposes.

¹ The jury also found the defendant guilty of kidnapping in the first degree in violation of General Statutes (Rev. to 1987) § 53a-92 (a) (2) (A). Prior to sentencing, however, the trial court granted the defendant's post-verdict motion for judgment of acquittal as to that count. The state has filed a separate appeal from that judgment, which is the subject of a separate opinion released this same day. *State v. Ward*, 306 Conn. , A.3d (2012). Therefore, this opinion only addresses the sexual assault charge.

² General Statutes § 53a-70 (a) provides in relevant part: "A person is guilty of sexual assault in the first degree when such person (1) compels another person to engage in sexual intercourse by the use of force against such other person or a third person, or by the threat of use of force against such other person or against a third person which reasonably causes such person to fear physical injury to such person or a third person"

We note that although § 53a-70 has been amended seven times since 1988; see Public Acts 1989, No. 89-359; Public Acts 1992, No. 92-87, § 3; Public Acts 1993, No. 93-340, § 14; Public Acts 1995, No. 95-142, § 13; Public Acts 1999, No. 99-2, § 49; Public Acts 2000, No. 00-161, § 1; Public Acts 2002, No. 02-138, § 5; these changes are not relevant to the claims raised by the defendant in the present appeal. Consequently, for purposes of clarity, we refer in this opinion to the current revision of the statute.

³ The defendant appealed from the judgment of the trial court to the Appellate Court, and we transferred the appeal to this court pursuant to General Statutes § 51-199 (c) and Practice Book § 65-1.

⁴ General Statutes (Rev. to 1987) § 54-193 (c) provides: "If the person against whom an indictment, information or complaint for any of said offenses is brought has fled from and resided out of this state during the period so limited, it may be brought against him at any time within such period, during which he resides in this state, after the commission of the offense."

⁵ In accordance with our policy of protecting the privacy interests of the victims of sexual assault, we decline to identify the victim by name. See General Statutes § 54-86e.

⁶ Practice Book § 41-8 provides in relevant part: "The following defenses or objections, if capable of determination without a trial of the general issue, shall, if made prior to trial, be raised by a motion to dismiss the information"

"(3) Statute of limitations"

⁷ General Statutes § 1-2z provides: "The meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered."

⁸ We note that the trial court interpreted § 54-193 (c) to require that the defendant left Connecticut with the intent to avoid detection, arrest and

prosecution for that crime. Although we conclude that § 54-193 (c) does not require such a finding of intent, we conclude that the trial court properly concluded that the state presented sufficient evidence under § 54-193 (c).

⁹ Although the defendant acknowledges that he did not specifically object to the “solely and exclusively” language in the trial court’s instruction, he did object to the trial court giving any instruction regarding whether the defendant fled, and requested certain language in the request to charge and the supplemental request to charge that the court failed to include. The state does not assert that the defendant’s claim is not preserved. Accordingly, we will review the defendant’s claim regarding the jury instructions on its merits.
