KAREN ZILKHA v. DAVID ZILKHA
(AC 39714)

Alvord, Prescott and Eveleigh, Js.

Syllabus

The defendant, whose marriage to the plaintiff previously had been dissolved, appealed to this court from the judgment of the trial court denying his motion for modification of custody and visitation and his motion for order. The parties' separation agreement, which had been incorporated into the dissolution judgment, provided, inter alia, that the parties would share joint physical custody of their two minor children, even though access by the defendant to the children was by therapeutic parenting time only, and that the children would reside with the plaintiff. Following the dissolution of the parties' marriage, the trial court rendered judgment on a stipulated agreement between the parties concerning efforts to reunify the defendant with his children, including the retention of certain therapists for the children. Thereafter, the defendant filed a motion seeking to open the dissolution judgment to modify the custody and visitation orders in effect and a motion for order, which both sought, inter alia, to enforce the stipulated agreement regarding reunification and to continue the reconciliation in order to reunite the defendant with the children. The trial court denied both of the defendant's motions and ordered that, inter alia, he would not have any legal right to direct access to the children, and that the extent of such contact, if any, would be determined solely by the children. *Held*:

1. The defendant could not prevail on his claim that the trial court abandoned its obligation to decide the matter before it and improperly delegated its statutory authority regarding custody and visitation by granting the children a considerable level of control over the extent of the defendant's access to them: that court, rather than delegating its responsibility, properly exercised its decision-making authority and met its obligation to decide issues of custody and visitation by denying the defendant's motions, as the court did not ask any other person to decide whether the defendant should have any right to custody or visitation, fully weighed the facts presented and the competing interests of all the parties, set forth the proper legal framework, and rendered a decision on the merits, which articulated in detail the basis for its decision denying the defendant's motions; moreover, the defendant failed to show that the court abused its discretion by failing to consider the best interests of the children or any established public policy, and the fact that the court's order left open the possibility of voluntary visits at the discretion of the children did not transform the court's decision-making into impermissible delegation.

2. This court found unavailing the defendant's claim that the trial court improperly relied on events that occurred between 2004 and 2007 in reaching its decision to deny his motions, and disregarded what he described as an indication to the parties during the evidentiary hearing that such evidence was too remote and insufficiently weighty for proper consideration by the court; the trial court properly exercised its discretion by weighing all the facts and circumstances of the family situation, and it did not indicate during the proceedings that it would not consider or rely on evidence occurring before 2007, or that it otherwise precluded or limited the scope of the parties' presentation of evidence, as the court encouraged the parties to focus on the most relevant facts relating to the then current feelings and their conduct, and it was not improper or surprising that such guidance from the court was necessary and appropriate to maintain an orderly and timely presentation of the evidence.
3. The defendant could not prevail on his claim that the trial court improperly considered and adopted the recommendations made by the children's guardian ad litem because she chose to function as an attorney for the minor children instead of fulfilling her obligations as a guardian ad litem: the record did not support the defendant's claim that the guardian ad litem blindly advocated for the children rather than exercised her own discretion in making her recommendations to the court, and although the court indicated that the guardian ad litem's recommendation assisted it in its own independent calculus of what relief would be in the best interests of the children, the court never indicated that it was simply adopting the recommendations of the guardian ad litem, and it also carefully considered and discussed in its decision other contrasting viewpoints; furthermore, the guardian ad litem's testimony and opinion were subject to cross-examination by the defendant's counsel, who was free to explore the defendant's allegations of bias and failure to adhere to her obligations as guardian ad litem.
4. The defendant's claim that the trial court, in reaching its decision, improperly relied on an erroneous factual finding that the parties' reconciliation therapist had ended reconciliation therapy with the parties was unavailing: whether the therapy was in fact ended by the professionals or whether the parties simply stopped attending on their own, there was nothing in the court's analysis that suggested that that was an important or material factor in its decision to deny the defendant's motions, as it was the failure of the therapy to alter the destructive behaviors of the parties that led the court to its conclusion that continuing therapy was unlikely to be in the best interests of the children, and, thus, even if the court's finding that the reconciliation therapist ended reunification therapy was a factual error, when the court's remaining unchallenged findings were considered as a whole rather than focusing on that one alleged inaccuracy, there was ample support in the record for the relief ordered by the court.

Argued November 30, 2017—officially released March 13, 2018

Procedural History

Action for the dissolution of a marriage, and for other relief, brought to the Superior Court in the judicial district of Stamford and tried to the court, *Abery-Wetstone, J.*; judgment dissolving the marriage and granting certain other relief; thereafter, the court, *Emons, J.*, rendered judgment on a stipulated agreement between the parties concerning efforts to reunify the defendant with his minor children; subsequently, the matter was transferred to the judicial district of Waterbury; thereafter, the court, *Hon. Barbara M. Quinn*, judge trial referee, denied the defendant's motion for modification of custody and motion for order; subsequently, the court, *Hon. Barbara M. Quinn*, judge trial referee, denied the defendant's motion to reargue, and the defendant appealed to this court. *Affirmed.*

Edward N. Lerner, with whom, on the brief, was *George Kent Guarino*, for the appellant (defendant).

D. Suzanne Snearly, guardian ad litem for the minor children.

Opinion

PRESCOTT, J. In this highly protracted and bitterly contested family matter, the defendant, David Zilkha, whose marriage to the plaintiff, Karen Kaiser,[1] was dissolved in 2005, appeals following the denial of postdissolution motions that sought to modify existing orders governing custody and visitation rights of the defendant with respect to the parties' children, who are now teenagers. The defendant claims on appeal that the court improperly (1) delegated its judicial function and failed to consider both the best interests of the children and

[1] Karen Zilkha is now known as Karen Kaiser. Although the trial court altered the case caption of its memorandum of decision to reflect that name change, we caption our opinion to reflect the names of the parties as they appeared in the original pleadings.

public policy by granting the children considerable control over the defendant's level of access to them; (2) relied on events that occurred between 2004 and 2007, despite having informed the parties that such evidence was too remote and insufficiently weighty for consideration; (3) adopted the recommendation of the children's guardian ad litem, despite the guardian ad litem's alleged abandonment of that role; and (4) relied on an erroneous factual finding that reconciliation therapy had concluded, purportedly in direct contradiction to testimony provided by the parties' reconciliation therapist. Additionally, the defendant requests by way of relief that, if this court agrees with all or parts of his claims, we should exercise our inherent equitable authority and order, without a remand, that the children participate in one of the reunification programs identified in his proposed orders to the trial court. For the reasons that follow, we reject the defendant's claims and affirm the judgment of the trial court.

The following procedural history and facts, as set forth by the trial court, *Hon. Barbara M. Quinn*, judge trial referee, in its detailed, thoughtful and well reasoned memorandum of decision are relevant to our discussion of the defendant's claims. The parties married in 1998, and their twin children, Chloe and Jake, were born a few years later in February, 2001. The parties "never were able to form the mutually supportive and understanding relationship that a successful marriage would require. . . . By 2004, their relationship became untenable . . . .

"[Despite the plaintiff having commenced divorce proceedings in late 2003, the parties] remained in the [marital] home in Connecticut together, and the escalating tensions were difficult for both of them to endure. [The defendant] worked in New York for a hedge fund, which ultimately collapsed. The time constraints of his position did not permit him to be home with his young

children during the evenings before they were put to bed. [The plaintiff] assumed the traditional mothering role to the considerable exclusion of [the defendant], whom she viewed as unfit to parent. . . . [The defendant] found the proposed loss of the daily society of his children extremely painful, and so resisted moving out of the home."

On three separate occasions during the summer and fall of 2004, the police were called concerning conflicts between the defendant and the plaintiff. The second and most significant of the three incidents "came during a verbal argument between these [parties] on June 30, 2004, which the children witnessed. [The defendant] lost control and struck [the plaintiff] that evening. He struck her in the face several times, and the police observed [the plaintiff] to have a black eye, ultimately medically determined to be a fractured eye orbit and bridge of her nose. [The defendant] denied hitting [the plaintiff], and blamed it on the children. . . .

"[The defendant] was ultimately criminally charged . . . and vacated the family residence. His children were then three and one-half years old. He has not resided with them or had them in his care without supervision during the day or overnight since that time . . . ."[2] (Footnotes omitted.)

"[The defendant's] employment situation was also fraught with difficulties, and the hedge fund where he

[2] The first incident involving the police happened on June 17, 2004, when, during a heated dispute, the plaintiff decided she was going to a motel and taking the children. The defendant grabbed his daughter Chloe and would not release her despite her screams for the plaintiff. The responding officer advised the defendant that he would be arrested unless he released the child, which he eventually did. As described by the court in its memorandum of decision, "[t]he third incident occurred during supervised visitation on October 30, 2004. The police were called by the visitation supervisor, who witnessed [the defendant] being verbally very aggressive toward [the plaintiff] in front of the children. The supervisor terminated the visit because he was afraid [the plaintiff] would be assaulted by [the defendant]." (Footnote omitted.)

was employed collapsed during this time. A Securities and Exchange Commission (SEC) investigation into the collapse of the fund and the conduct of its principals, including [the defendant], resulted in negative publicity. Among other factors, this negative publicity resulted in [the defendant's] continued unemployment in the ensuing years and to the present time. All these matters added . . . stress and tension [to] the end of his marital relationship [and contributed to] his inability to enjoy free and uninhibited access to his two children."

The plaintiff and the defendant were psychologically evaluated by Harry Adamakos, a psychologist, from October, 2004, through March, 2005. The evaluation was ordered, at least in part, because the plaintiff, at that time, was seeking sole custody of the children. Adamakos prepared a report summarizing his findings as to each party.[3] At the time of the evaluation, the parties

[3] With respect to the defendant, Adamakos' report provided as follows: "Undoubtedly, [the defendant's] demeanor and behavioral presentation improves when he is feeling less defensive, and may indicate the presence of some psychological strengths which are now under assault by the very high level of stress he is experiencing (regardless of whether it is caused by himself or by the situation). There was some indication that [the defendant's] response can be somewhat histrionic, and that in this regard, he can be impulsive and evidence impaired judgment. There was also some sense that he maintains an attitude of narcissism and a sense of entitlement [that] may contribute to his occasionally violating the expectations of others. However, there was lacking indication that he was malicious in his intent. There is no dispute that he was engaged in severe verbal disputes (tirade at Borders 10/30/2004), some level of physicality (pushing [the plaintiff] 6/30/2004) and desperate dramatic acts (holding Chloe so that [the plaintiff] could not leave with her 6/17/2004). He seems to be a person who tends to manage his stress by finding outlets of escape or recreation. He engages in denial and repressive defense mechanisms excessively." With respect to the plaintiff, Adamakos made the following observations: "[The plaintiff] is a woman who appears to have a fairly traditional sense of mores and expectations. Her aspirations have been modest and continued to be centered around parenting the children. She appears to have needed some assistance in the transitions in her life, and she sometimes had some difficulties adjusting to trying circumstances. It would seem as though she may struggle with some anxiety and dependency related issues, but largely she has compensated for them over the years. Extreme stress threatens to escalate these needs,

agreed that, prior to the escalation of conflict in 2004, the children enjoyed a very positive relationship with the defendant. Adamakos noted that, although the defendant lacked experience, he probably could learn to care for the children responsibly, at first for short periods of time but eventually for a day or two at a time. Adamakos also believed that the defendant's ability to parent the children "would likely improve as they become older and move out of the tender years, supporting a plan that would further increase father-child time as they get older." Despite this evaluation, "a normal divorced parent relationship with their father was not permitted to evolve. The psychological features of each parent noted in [Adamakos'] evaluation combined into the 'perfect storm' of mutually negatively reinforcing interactions and destructive synergy to prevent a normal visiting relationship from developing in the many years that have passed since that time.

"[The plaintiff's] anxiety and need for control over all aspects of visitation have called into play the worst of [the defendant's] needs for denial and excessive repressive defense mechanisms, all to the detriment of their two children. The plaintiff does not accept or believe that it is best and healthy for her children to have access to [the defendant]. Her rejection of this central and important tenet of child-rearing and her beliefs about [the defendant] have led her to completely frustrate the normalization of [the defendant's] access to his children. [The defendant's] own angry conduct and at times inappropriate, childishly self-focused dealings with his children have played into her fears and

but there is no indication of significant psychopathology for her either, and in a very straightforward manner, psychological testing supported the impression that she is functioning normally."

As indicated by the court in its memorandum of decision, Adamakos' observations were consistent with the court's own contemporaneous observations of the parties during the underlying courtroom proceedings.

anxieties, and only strengthened her beliefs in this regard."

The court also found that the following contributed to the parties' inability to implement a normal visiting relationship between the defendant and his children. First, the parties never developed any effective means to communicate about their children, a defect that continues to the present day. Second, the plaintiff never could overcome her distrust of the defendant or her lack of respect for his input regarding parenting decisions, ignoring the consequences this had on the children. Finally, the defendant lacked the attentive and focused parenting skills needed to achieve a successful visiting relationship with the children, failing to understand or accept that such a relationship, even under the best of circumstances, would likely fail to achieve the type of closeness experienced in intact families.

The parties eventually entered into a separation agreement that was approved by the court and incorporated into the judgment of dissolution rendered on May 31, 2005. "That agreement provided, inter alia, that they would share joint physical custody of their children, who would reside with their mother. Despite this purported joint custody label, access by the father to the children was by therapeutic parenting time only . . . [consisting of] five hours each Saturday, three hours each Wednesday, with detailed provision for makeup visits, cancellation and so on.

"The agreement also provided for a complicated and ultimately prohibitively expensive method of supervision and gatekeeping by the children's therapist and a clinical psychologist. There were no detailed provisions for how [the defendant] might establish his ability in the future to have unsupervised visitation with his children. The agreement is silent as to the reasons for such supervision, although it can be inferred by the events which

took place in 2004 . . . .” (Footnote omitted; internal quotation marks omitted.) Although the dissolution judgment was modified several times, those provisions governing the legal and physical custody of the children, including that the defendant have only supervised visitation with the children, remained unchanged.

Between 2005 and 2007, some of the defendant's supervised visits with the children were successful and even enjoyable. The defendant, however, was unhappy about the cost of supervised visits and what he viewed as excessive scrutiny as a result of the presence of supervisors. “The reports from this time describe [the defendant] as often unable to respect the children's physical boundaries. He would tickle his son far too long, after being requested to stop. He would tease him in ways that were uncomfortable for the child. His anger at [their periodic] negative reactions to him also frustrated progress in visitation.” Although the defendant made attempts to end supervision, those efforts failed. Nevertheless, toward the beginning of 2007, the defendant's counsel at that time recommended the appointment of “a new set of supervisors without the negative connections that the then existing supervisors and gatekeeper had with the family. That recommendation, whether by acceptance or by happenstance, was in fact followed, and a revised order entered by agreement in family court. A new team of supervisors was appointed and the process continued.

“The outcome was, unfortunately, no different . . . [because] the system required by [the plaintiff] in the initial decree was inherently flawed. Because of such continued close observation, [the plaintiff's] obsessive fears about [the defendant], as well as [the defendant's] parenting failures, the very outcome the court orders were designed to prevent came about. That outcome was the slow, but complete erosion of the relationship between [the defendant] and his children. . . .

"There was a gap in contact between [the defendant] and his children during 2007 before a new supervision plan was put into place. When supervised visits were resumed, they were conducted by new therapeutic supervisors . . . . When the supervised visitation concluded in September of 2009, [the primary supervisor] wrote a summary of the supervision. As to [the defendant] and his then [eight year old] twins, she wrote: Jake and Chloe are black and white thinkers, with little room in their ability at this point to think about the duality of situations. . . . Their belief now is [that the defendant] is a liar. It is all about one side or the other, and in this instance it is the negative side. When [the defendant] tries to challenge the children to recall a memory and see it from his perspective, the children feel invalidated and disrespected. . . . Children of this age have a huge sense of what is right and wrong and what is fair and unfair. The only way to handle this situation is to acknowledge the children's point of view. . . . [The defendant], himself being a black and white thinker, has trouble with this concept, and tries to drive the point home, that it didn't happen that way. This only creates power struggles between [the defendant] and the children and does not enhance their relationship." (Internal quotation marks omitted.)

"Of [the plaintiff's] conduct, [the primary supervisor] noted that . . . [the plaintiff] is empathic with the children, and often is in the mode of I know which further reinforces their belief that their father is wrong. The empathy reinforces the polarized differences. That is not [the plaintiff's] intention, I believe, but because she is concerned and aroused emotionally by wanting to attune to her children's needs, this activates the children's fears and therefore their fight/flight mechanisms come into play, which makes them want to avoid these feelings, which they associate with their father."

(Emphasis omitted; footnote omitted; internal quotation marks omitted.) The supervisor did not believe, however, that the plaintiff was consciously undermining visitation. The supervisor further maintained that the defendant exhibited great parental ability as long as he was being supervised and the children felt calm.

Nevertheless, "during this period of supervised visitation when her children were between the ages of six and eight years old, [the plaintiff] indirectly sabotaged the visitation. She did this by being overly involved in exchanges and by soothing Jake and Chloe both before and after the visitation. As documented in the visitation notes, she [frequently] scheduled activities and meals shortly after visitation . . . which caused the children's engagement in the sessions to become minimal and resisting. Further . . . it was her custom and habit to keep notes of everything the children said about such sessions. While she claimed she did not let the children know she was keeping these notes, it strains the court's credulity that her heightened and emotional obsessive need 'to protect' her children would not have been apparent to them, through her body language, her tension and her focused interest in what they were saying about their father.

"[The defendant] did not always cover himself in the cloak of good parenting in these visitations, either. . . . As he came under scrutiny, his less helpful traits were called forth and negatively impacted visitation. . . . [V]isitation ended by September, 2009, after two particularly unpleasant events.[4] A different focus and concern

[4] The first event occurred in July, 2009, when the children were performing in a play and asked the defendant not to attend. Because the plaintiff also did not want him to attend, the supervisor's company would not supervise that contact. Nevertheless, the defendant attended the performance, and his attendance was videotaped by the plaintiff's spouse, Glen Kaiser. When asked, the plaintiff told the children that the defendant had attended. As the trial court found, "[n]either parent earn[ed] any glory for their conduct. . . . [The defendant] should have respected his children's wishes and used the next visitation session to ask his children to tell him about the play,

on his part could have made a significant difference in his children's perception of them." (Footnote added.)

"[The] visits ended in September, 2009, with no resolution of [the] negative tensions between [the defendant] and his children. . . . [A]t that time, when Chloe and Jake were eight years old, they had emotionally aligned themselves with their mother. [The sometimes] emotionally obtuse conduct [of their father] during visitation supported their negative view of him. The combination of unhelpful conduct [of] both parents meant

which undoubtedly they would have enjoyed. His conduct, if [the plaintiff's] resistance to his access to the children is at least a partially conscious strategy, played right into her hands by his failure to honor the children's wishes.

"The [plaintiff's and Glen Kaiser's] reaction was also not appropriate and calls into question just how innocent [the plaintiff's] intentions in her 'empathy' with her children have been. The visitation supervisor was focused only on [the defendant's] less than exemplary conduct. She constructed, together with [the defendant], a script for a sincere apology which he did not follow. The self-indulgent excuses he made upset the children and the visits deteriorated from then on. Likely, as [Adamakos] noted in 2005, more than four years earlier, [the defendant's] 'denial and excessive defense mechanisms' did not help him in this task.

"Some three or four weeks later, there was a visit scheduled between [the defendant], his mother and the children's step-grandfather. By way of background, [the defendant] comes from a prominent extended family, with members that reside in England and Europe. When they were young, Jake and Chloe enjoyed a good relationship with their paternal grandmother, [Jillian] Ritblat, and other members of the family. Over time, [the plaintiff] put the brakes on these connections and did not support them. [Jillian] Ritblat testified as to how attenuated their connections had become during the 2007–2009 supervised visitation period. The children, in 2009, were extremely resistant to visitation and acted in a manner that can only be described as contemptuous and extremely rude toward their grandmother and grandfather. In an ordinary family situation or even visitation situation, they would have been sanctioned for such conduct. In this instance, however, therapeutic supervision meant that they were rewarded by the intervention of the supervisor when the grandparents reacted with some hostility to the lack of respect shown to them.

"There is no doubt the entire situation could have been handled by the adults with more compassion. But these children were then just eight years old. That the children's standoffish, resistant, and at times rude conduct would not have been acceptable pursuant to the cultural norms of the grandparents was not considered by anyone. The visit ended prematurely

that their children accepted their mother's anxiety and concerns about visits. They accepted her belief system about their father and his family as their own, and their stance continues to the present time.

"Wherever the blame for the cessation of visits in 2009 lies, the fact remains that there were no more visits until early spring [of] 2014 . . . when Jake and Chloe were almost thirteen. This is a very significant length of time for children of this age. The memories of their father and their sense of any relationship with him would have eroded just due to that gap in time alone, never mind the other issues between them . . . . Both [the defendant's] parenting deficits, which the children still recall, and the lost window of time during these children's latency years had important and significant consequences for the next and last failed attempt at reunification." (Footnote omitted.)

On January 25, 2013, the court rendered judgment on a stipulated agreement between the parties concerning efforts to reunify the defendant with the children, including the retention of therapists Linda Smith and David Israel for the children. According to the stipulation, "[t]he therapists [were to] direct who meets with them, at what time and with what frequency." The trial court noted that "[t]he agreement was the result of all counsel understanding that it was in the children's best interest[s] to have contact with their father and his extended family.[5] But even this agreement and order

with many recriminations. Jake and Chloe have not seen their grandmother since that time, a period of seven years."

[5] The stipulation provided in relevant part: "The mother will support the father/child relationship by saying to the children that she and the father have agreed to stop arguing in court; that she wants them to have a loving and caring relationship with their father, and that she will support them in their efforts to rebuild that relationship, because he is their father and because he cares about them, loves them, and has much to offer them. [The children's attorney and their guardian ad litem] will be present when the mother has this conversation with the children. Both parents will respect the desires of the children, except they jointly expect the children to engage and cooperate with their goal to reunite them with their father."

was frustrated for over a year by [the plaintiff's] unwillingness to sign the retainer agreement and her detailed concerns. She has admitted that she did not believe the reunification would ever go forward. In a very real sense, although there were subsequently four visits, reunification did not go forward. It ended prematurely and did not accomplish the outcome sought . . . .

"As had happened before, [the plaintiff] encouraged her children to believe that each of them could determine whether or not the visits should continue. Chloe and Jake were demonstrably extremely resistant to visitation with their father. [The plaintiff] continued her resistant and undermining behavior, ongoing at that point for more than ten years . . . . By this time, [the plaintiff] had perfected the art."[6] (Footnote added.)

The four visitation sessions the children had with the defendant were very stressful for them, and they "began

[6] "On March 9, 2014, Smith wrote an e-mail to the guardian ad litem and the children's therapist outlining [the plaintiff's] resistant actions. [Smith] stated that: I have offered to try to make this as easy and least disruptive [as possible] for the children. For example, not taking them out of school. [The plaintiff] then chooses to take them out of school, and the children then blame [the defendant] for missed school. They blame [the defendant] for having to hide in their rooms when the process services came. But who didn't open the door? They blame [the defendant] for the court dates over the last year and all the money that has been spent. But who didn't sign the contract and resisted starting the reunification? They vilify every professional who has not aligned with their viewpoint of no contact ([the] children and [the] mother). They are looking to make [the defendant] appear bad that he may be bipolar or [manic]. Yesterday they locked themselves in their room. A typical parent response would have been to open the door. Locked doors can be opened, both with tools and/or taking doors off the hinges. . . . [T]hey didn't do that. Why not? A clear message was sent to the children. Yesterday, Chloe had a concert that was supposed to be taken away. It wasn't. . . . [The defendant] predicted that the children would go to the concert last night. . . . He also predicted that the children would blame him for missing school (after [the plaintiff] chose missing school instead of a late afternoon [appointment]). . . . I really hope that a fuller picture of the family dynamics are becoming clear to everyone. There are many issues to address here. It is not just the children and [the defendant]. This is systemic and needs a unified systemic approach. Otherwise the same pattern will happen as from the past."

to demonstrate and disclose symptoms of their distress to their mother and their therapist. . . . The children's symptoms of distress, in addition to the conduct of their mother, caused the professionals to end the attempt at reunification.

"There was no rapprochement between the children and their father possible at this late date when they were thirteen. [The defendant] and his children have not had any contact since the last of the four visits scheduled with [Smith]." The trial court agreed with and credited the following assessment by the guardian ad litem with respect to the extent of the parental conflict at issue in the present case: "The parents have demonstrated a complete lack of insight as to the effects of their inability to communicate after the unfortunate and dramatic history and, if ordered to participate in reunification therapy, the children will have the added emotional distress of the tension involved in bringing these two parents again within the orbit of the other. Neither parent accepts responsibility for the familial circumstances in which the children cope, but instead blame the other in every aspect. . . . Both believe the other had ruined his or her respective life and that of the children."

On April 23, 2014, the defendant filed a motion seeking to open the initial 2005 dissolution judgment to modify the custody and visitation orders in effect. The defendant claimed that the plaintiff was in violation of the January 25, 2013 stipulated judgment and, by way of relief, sought orders (1) requiring the children's removal from the plaintiff's home, (2) continuing the reconciliation therapist's efforts to reunite him with the children, (3) mandating the plaintiff to pay for all ongoing costs related to the children's individual therapy, reconciliation therapy, and the attorney's fees of the defendant. On May 20, 2015, the defendant filed a motion for order that asked the court (1) to order that the January 25,

2013 stipulated agreement regarding reunification remain in effect and be complied with, (2) to issue appropriate orders properly structuring the reconciliation process, and (3) to award the defendant reasonable attorney's fees for bringing and arguing the motion.

The court conducted an evidentiary hearing on the defendant's two postjudgment motions over the course of ten days beginning on January 13, 2016, and ending on February 19, 2016. At the close of the hearings, on February 19, 2016, the defendant filed a statement of proposed orders amending his original claims for relief. As described by the court, the statement set forth three alternative orders in descending order of desirability. The first two options each sought "to require the children to attend the Building Bridges reunification program, either the intensive four day program or the shorter two day Overcoming Barriers program. The third option [was to continue] reunification services with [Smith] and order that the mother undergo therapy to deal with the issues of the minor children and their contact with their father. Other claims for relief [were] for an award of attorney's fees, to compensate [the defendant] for [the plaintiff's] 'alienation' of the children from him, as well as an acknowledgment by the court with an apology that this matter has taken so long to reach a contested hearing." The plaintiff, who represented herself throughout, filed a closing statement that summarized the testimony in her favor and implied that nothing should change regarding custody or visitation because the defendant failed to demonstrate any change in circumstances.

During the trial court proceedings, the court heard recommendations about potential future efforts at family reunification, including from Benjamin D. Garber, an expert witness in psychology and parent/child reunification therapy offered by the defendant. "Garber recommended a program called Building Bridges, for

troubled and alienated parent-child relationships. . . . He acknowledged that children involved in this program experience intense pain initially in the process and are under stress. . . . The Building Bridges program would require Jake and Chloe to leave the care of their mother, and attend what is essentially a 'boot camp' for reunification with their father. The intensive program is a four day residential program with [twenty-four] hour therapeutic support, then followed by time alone with their father for a week with continued therapeutic support. Additionally, there is a period of temporary custody of the children to their father for ninety days. The children could also not have any contact with their mother for a specified period of time. The second option is a less intensive [two and one-half] day program, titled Overcoming Barriers, with the same structure and enforced access thereafter. Both programs prohibit contact with the parent who has been determined to be 'alienating' the children from their father."

The court also heard testimony from the children's past and present guardians ad litem regarding the well-being of the children and the effects on them of ongoing reunification efforts. The court summarized as follows: "With the exception of contact with their father, the children have been and are doing extraordinarily well in all other spheres of their lives in the care of their mother. It speaks well of [the plaintiff] and [her current husband] and the home they have been able to create for these children. They are gifted children and excelling academically. They have full social lives and are well respected by their teachers and other students. They are seen as the 'rock stars' of their school class by the school administrators.

"On the negative side, the radioactive fallout from the access disputes between their parents has had an impact. All reports are that they remain anxious about whether they will be forced to spend time with their

father by the court or whether, worse yet, custody will be awarded to him. They do not understand why the court does not hear them and accept the validity of their position and emotions about their father."

The present guardian ad litem, Attorney Suzanne Snearly, indicated to the court that the children "believe that their father has not respected them, their physical boundaries and their positions in the past. . . . [They] firmly believe right now that they are a prize to be captured by their [father] at their expense and that of others. They do not want to be treated that way." (Internal quotation marks omitted.) She further indicated that "[t]o be viewed as a prize is offensive to [the children] . . . and they would be devastated if [the defendant] were to be awarded custody of them. They feel that they have been hostages to this protracted litigation. [Snearly] stated she was sad that they had lost their childhood in that way and lost the ability to have a full relationship with their father. In her opinion, litigation or the Building Bridges program could not create that which had been lost. The children had shared with her that they would be more inclined to reach out to their father if the litigation and forceful efforts to have access would stop. And allowing them to move forward at their own pace is what she recommended, after all these many years of anxiety and protracted litigation. She believed neither the law nor court orders could provide a more reasonable remedy than the parties could fashion on their own in ordering their lives privately." Finally, Snearly testified "that the children did not wish to be forced to have visitation and that, at this point in time, they were prepared to explore the issue voluntarily and send a report of their doings and lives to their father every ninety days. She also felt strongly that their therapy with [Israel] had been enormously beneficial to them and should continue."

On May 16, 2016, the court issued its memorandum of decision denying the defendant's motions. Citing to the guiding criteria set forth in General Statutes § 46b-56, the court reached the following conclusions:[7] "[The defendant's] capacity and disposition to understand and meet the needs of [the children] has been limited. [The plaintiff's] capacity has been limited only on the issues of understanding the importance of knowing their father in the children's optimal development and exposing them to detailed information about the ongoing conflict. In all other areas, she has met their needs very well. The children's past interactions with their father have been largely negative, in their view. Some positive interactions have occurred but not for some considerable time. They have a close relationship with their mother. . . . [Both parties have] been guilty of involving their children in their disputes and litigation. Overall, in considering these factors as to what is in these children's best interests, neither parent fares well on all measures. As found earlier in this decision, neither parent fully appreciates the harm each has done to each other or to their minor children.

[7] The court earlier in its decision had reached the following conclusion based upon its review of the exhibits and testimony presented by the parties: "[T]he truth of each of these parents' assertions against the other lies somewhere between the extremes they present. The plaintiff cannot acknowledge or recognize the manner in which her excessive anxiety and compulsive fears about [the defendant] have impacted her children and their reaction to their father. Conversely, the defendant only now appears to recognize how [the plaintiff's] conduct and the children's mirroring actions triggered his overblown and faulty parenting reactions. The parties' testimony and demeanor in court amply demonstrated their ability and willingness to continue their negative and toxic interactions.

"[Although] greater fault in bringing about the complete failure of access between the children and their father can perhaps be assigned to the [plaintiff], neither of these parents is blameless. For [the children], the amount of blame to be assigned [to] each of their parents has little meaning. Both have lost sight of the children's need to have the unhampered love and affection of both parents. Their war over their children brings the biblical example of King Solomon's ruling vividly to mind. Unfortunately, the biblical sword has already fallen on Jake and Chloe."

"As to [the defendant's] claims, the court begins with the observation that in a civilized society, it should not be the custom or practice to punish youthful victims for the transgression of their elders. [The defendant's] preferred solution would force Chloe and Jake to have contact with him, in a program with therapeutic supports. It appears to be a method for forced reprogramming of the children and their emotional understanding of their family constellation. The emotional coercion of necessity involved in this program would do violence to these children's emerging sense of self and ability to determine their lives. Ordering their attendance at the program would punish these innocent teenagers for the inability of their parents to become fully functioning and emotionally forgiving adults who could leave their personal war and hatred behind. The court finds that ordering attendance at the Building Bridges program, or the less intensive Overcoming Barriers program, to be a draconian solution in these unusual circumstances. Forced attendance at either program would mete out the blame and punishment [the defendant] wishes to impose on [the plaintiff] on his children. The court declines to take this shortsighted step.

"These children believe that they and their views are not respected by their father or heard by the court. The court does find [that] they have internalized their mother's emotional landscape and negative views of their father and made them their own. Whatever one's view of how their position about their father came about, the court finds that for Jake and Chloe, it has emotional validity and reality, and must be seen in that light. . . .

"The [g]uardian ad litem has suggested and advocated a solution, which would let these . . . teenagers determine the progress of access by themselves. Ordinarily, courts do not empower young people of this age to make adult determinations. But each case is unique, as

are these two teenagers. Each of them has been given tacit permission at a younger age to determine the course of their access to their father. Additionally, there have been years of court imposed solutions to the Zilkha/Kaiser family dysfunction supported by well-meaning attorneys and therapists. None of the proposed solutions and earlier court orders has resulted in any meaningful change or increased access.

"There are circumstances where it is the public policy of the state of Connecticut to permit more adult modes of self-determination by young people under the age of eighteen. General Statutes § 45a-724 (a) (1), for example, provides that a child in foster care who can be adopted must consent to that adoption [if the child has attained the age of twelve]. If that consent is not forthcoming, the planned adoption will not proceed. The young person is permitted to have a significant say in [his or] her future, under those circumstances. Additionally, a young person who is sixteen may seek to be recognized as an emancipated minor. General Statutes § 46b-150d permits such a minor, if so emancipated, to live independently and function as a legal adult. Chloe and Jake, fortunately, do not find themselves in either of these statutorily enumerated situations. But their request to be permitted a similar level of mature choice is entitled to be recognized. The court concludes that to do so is in their best interests.

"The court finds that it is past time to seek change and healing for this group of individuals tied by familial connections. As [Garber] noted in his testimony and the court also finds, there is a limit to what court orders can accomplish to achieve personal change in resistant individuals. The usual court remedies of sanctions, financial orders and the like are not well suited for this herculean task. They would serve only to fuel the ongoing Zilkha family war, as they have for twelve years in the past.

"In this war, this court will seek to impose a cease fire, a cessation of hostilities and some recommendations for how lasting peace and recovery might be achieved. Lasting peace and reconciliation are not outcomes that can be imposed, either on nations or individuals. But if they are sincerely sought and mechanisms [are] put in place for their achievement, they may be secured. It is . . . time to try something new and different.

"First, the court finds that it is in Jake's and Chloe's best interests to permit them to move forward at their own pace to secure a relationship with their father and his extended family. Their position about access to their father has been heard and understood. They should not worry about 'something' until they create that 'something' and give it reality.

"To continue with these thoughts, the 'something' the court now orders is only whatever 'something' they allow it to become. Both Jake and Chloe shall report to their father in detail about their lives every ninety days. They have indicated that they are willing to start with such contact. As that process becomes more comfortable for them, more contact could occur, although it is not ordered. Telephone, e-mail and other contact has never been prohibited in this case, although the parents have considered it to be so. Both children are encouraged to communicate more often in the future than their current stated preference when they are ready to do so. The court encourages them to make it 'something' that begins to approach normal parental access, when they are ready and prepared to do so.

"After they have become comfortable sharing some of their life with their father, they might begin with phone calls, e-mails or text exchanges and then consider meeting face-to-face at a comfortable place of their choosing, such as [a] food court in a mall for a

brief snack. Such progression of contact is for them to determine. All these statements are only suggestions by the court, to be shaped by Chloe and Jake and their stated wishes. Both [Israel] and the guardian [ad litem] should assist them in their efforts."

The court then issued the following orders. With respect to future access by the defendant to the children, the court stated that "[s]uch access as may evolve between [the defendant], his extended family and Jake and Chloe during the less than three years remaining before Jake and Chloe are eighteen shall be voluntary and at Jake and Chloe's choosing and direction. Minimally, it shall be by quarterly written reports provided by the children about their lives to their father. Hopefully, it will progress to more access and, ultimately, personal contact on a regular basis. Should the children wish to progress at some point in the future to normal access, [the plaintiff] must permit alternate weekend overnight access from Friday through Sunday, some hours during the week after school, as well as uninterrupted vacation time in the summer for up to three weeks. All such access is to be unsupervised.

"[The plaintiff] must also permit access by the Zilkha extended family, if Jake and Chloe wish it. That access should begin by sharing information about their lives with their paternal grandmother, much the same way they share information with their father, and perhaps more frequently than every ninety days. The court encourages both of them to communicate with their grandmother, as in the past they had a good relationship with her. Should they wish to do so, they may visit with her and [the plaintiff] is ordered to facilitate such visits.

"The court cautions [the defendant] not to read any legal entitlement to direct access in any fashion to his children through these orders. Visitation is always for the children's benefit. *In this unusual high conflict*

family and, given Jake and Chloe's age, the court has made it exclusively the minor children's legal entitlement." (Emphasis added.)

The court ordered both parties to attend individual therapy with a therapist. With respect to the defendant, the court's order provided that "[h]is therapist should assist him in understanding his children and adolescents in general so that when Jake and Chloe are able to reach out to him, he will be able to respond in thoughtful and emotionally appropriate, as well as considerate, ways. He is to be guided by the affirmative steps his children take and not to prematurely initiate contact on his own. Any such contact as he does have shall be at their request only." As to the plaintiff, the court indicated that "[w]ithin the context of the therapy, it is suggested that the therapist explore the importance of access to both parents for the well-being of children and the consequences of the estrangement and alignment with her own views that [the plaintiff] has imposed upon her children."

The court ordered the children to continue in counseling with Israel "as long as he is willing to provide such assistance and it is therapeutically indicated. If he personally can no longer continue at some point in the future, he shall recommend a replacement therapist for the children. Their mother is ordered to ensure the two children attend such therapy. Additionally, [Israel], consistent with the therapeutic goals for the children, should endeavor to assist in their voluntary reestablishment of a relationship with their father. To that extent and only if he so requests, the parents and their therapists shall cooperate with any steps he may recommend. Each of the parties shall sign all necessary releases to ensure that all therapists are able to communicate with each other about these steps."

In addition, the court ordered the children's guardian ad litem to disseminate copies of the court's written

decision to the parents' individual therapists and to Israel and to ensure that any ordered releases were signed so that the professionals could communicate with each other. The court denied the defendant's request for attorney's fees, indicating that "an order for payment of such fees can only be designed as punishment. The request to use the court system to bludgeon the [plaintiff] is denied with prejudice." The court directed the plaintiff to dismantle her "war room . . . in which her litigation materials are kept and where she works on preparation for the litigation in which she has been involved." (Internal quotation marks omitted.) According to the court, dedicating the space to a "more peaceful use . . . will signal to the children a significant change in their mother's stance toward their father and help them all move forward to secure some peace and healing." The court retained jurisdiction over the matter for a period of one year with respect to issues involving access and visitation "to both streamline further litigation and to ensure enforcement of its orders." Finally, although acknowledging the parties' right to appeal its decision, the court cautioned that "[g]iven their many years of toxic litigation in this family dispute, their collateral civil litigation, as well as appeals already taken, the court directs each of them to carefully consider the negative impact of such conduct on their children. Neither should act in ways to increase their children's anxiety over their future. Such conduct would not be in their children's best interests."

The defendant filed a motion for reargument on June 3, 2016, followed by a supplemental memorandum in support of the motion on June 8, 2016. The court denied the defendant's motion on September 28, 2016. This appeal followed.[8]

[8] The plaintiff never filed an appellee's brief in this matter. On April 13, 2017, this court issued an order indicating that the appeal would be heard solely on the basis of the appellant's brief, appendices and record as defined by Practice Book § 60-4. Thereafter, the guardian ad litem filed a brief in opposition to the defendant's appeal. See Practice Book § 67-13.

I

The defendant first claims that by granting the children a considerable level of control over the extent of the defendant's access to them, the court improperly delegated its judicial function and failed to consider both public policy and the best interests of the children. In support of this claim, the defendant primarily relies upon cases in which our appellate courts have, in different circumstances, found that the trial court completely delegated its decision-making authority to a third party. See *Valante* v. *Valante*, 180 Conn. 528, 532–33, 429 A.2d 964 (1980); *Nashid* v. *Andrawis*, 83 Conn. App. 115, 120, 847 A.2d 1098, cert. denied, 270 Conn. 912, 853 A.2d 528 (2004); *Weinstein* v. *Weinstein*, 18 Conn. App. 622, 628–29, 561 A.2d 443 (1989). We conclude that those cases are readily distinguishable from the court's action in the present case. Furthermore, the defendant has failed to persuade us that, in rendering its decision, the court ignored its obligation to consider the best interests of the children or ran afoul of public policy. Accordingly, we reject the defendant's claim.

We begin with the applicable law governing custody and visitation orders as well as our standard of review. Subsection (a) of § 46b-56 authorizes the Superior Court in any action involving the custody or care of minor children, including a divorce action brought under General Statutes § 46b-45, to "make or modify any proper order regarding the custody, care, education, visitation and support of the children . . . according to its best judgment upon the facts of the case and subject to such conditions and limitations as it deems equitable." Subsection (b) of § 46b-56 provides in relevant part: "In making or modifying any order as provided in subsection (a) of this section, the rights and responsibilities of both parents shall be considered and the court shall enter orders accordingly that serve the best interests of the child and provide the child with the active and

consistent involvement of both parents commensurate with their abilities and interests. . . ." Subsection (b) contains a nonexhaustive list of possible orders, ending with a catchall provision permitting "any other custody arrangements as the court may determine to be in the best interests of the child." Subsection (c) of § 46b-56 provides in relevant part that "[i]n making or modifying any order as provided in subsections (a) and (b) of this section, the court shall consider the best interests of the child, and in doing so may consider, but shall not be limited to, one or more of [sixteen enumerated] factors[9] . . . . The court is not required to assign any weight to any of the factors that it considers, but shall

[9] The statutory factors are as follows: "(1) The temperament and developmental needs of the child; (2) the capacity and the disposition of the parents to understand and meet the needs of the child; (3) any relevant and material information obtained from the child, including the informed preferences of the child; (4) the wishes of the child's parents as to custody; (5) the past and current interaction and relationship of the child with each parent, the child's siblings and any other person who may significantly affect the best interests of the child; (6) the willingness and ability of each parent to facilitate and encourage such continuing parent-child relationship between the child and the other parent as is appropriate, including compliance with any court orders; (7) any manipulation by or coercive behavior of the parents in an effort to involve the child in the parents' dispute; (8) the ability of each parent to be actively involved in the life of the child; (9) the child's adjustment to his or her home, school and community environments; (10) the length of time that the child has lived in a stable and satisfactory environment and the desirability of maintaining continuity in such environment, provided the court may consider favorably a parent who voluntarily leaves the child's family home pendente lite in order to alleviate stress in the household; (11) the stability of the child's existing or proposed residences, or both; (12) the mental and physical health of all individuals involved, except that a disability of a proposed custodial parent or other party, in and of itself, shall not be determinative of custody unless the proposed custodial arrangement is not in the best interests of the child; (13) the child's cultural background; (14) the effect on the child of the actions of an abuser, if any domestic violence has occurred between the parents or between a parent and another individual or the child; (15) whether the child or a sibling of the child has been abused or neglected, as defined respectively in section 46b-120; and (16) whether the party satisfactorily completed participation in a parenting education program established pursuant to section 46b-69b." General Statutes § 46b-56 (c).

articulate the basis for its decision." (Footnote added.) "It is well settled authority that [n]o court in this state can delegate its judicial authority to any person serving the court in a nonjudicial function. The court may seek the advice and heed the recommendation contained in the reports of persons engaged by the court to assist it, but in no event may such a nonjudicial entity bind the judicial authority to enter any order or judgment so advised or recommended." (Internal quotation marks omitted.) *Nashid* v. *Andrawis*, supra, 83 Conn. App. 120.

We utilize an abuse of discretion standard in reviewing orders regarding custody and visitation rights; see *Gallo* v. *Gallo*, 184 Conn. 36, 43, 440 A.2d 782 (1981); *Ridgeway* v. *Ridgeway*, 180 Conn. 533, 541, 429 A.2d 801 (1980); although recognizing that whether the court improperly delegated its judicial authority presents a legal question over which we exercise plenary review. See *Weiss* v. *Weiss*, 297 Conn. 446, 458, 998 A.2d 766 (2010). In exercising its discretion, the court should consider "the rights and wishes of the parents and may hear the recommendations of professionals in the family relations field, but the court must ultimately be controlled by the welfare of the particular child. . . . This involves weighing all the facts and circumstances of the family situation. Each case is unique. The task is sensitive and delicate, and involves the most difficult and agonizing decision that a trial judge must make. . . . The trial court has the great advantage of hearing the witnesses and in observing their demeanor and attitude to aid in judging the credibility of testimony. . . . Great weight is given to the conclusions of the trial court which had the opportunity to observe directly the parties and the witnesses. . . . A conclusion of the trial court must be allowed to stand if it is reasonably supported by the relevant subordinate facts found and does not violate law, logic or reason. . . .

[T]he authority to exercise the judicial discretion under the circumstances revealed by the finding is not conferred upon this court, but upon the trial court, and . . . we are not privileged to usurp that authority or to substitute ourselves for the trial court. . . . A mere difference of opinion or judgment cannot justify our intervention. Nothing short of a conviction that the action of the trial court is one which discloses a clear abuse of discretion can warrant our interference." (Citations omitted; internal quotation marks omitted.) *Gallo* v. *Gallo*, supra, 43–45.

The defendant's claim that the court in the present case abandoned its obligation to decide the matter before it and improperly delegated its statutory authority regarding custody and visitation simply is not borne out by the careful and exhaustive decision issued by the trial court. The court did not ask any other person to decide whether the defendant should have any right to custody or visitation. The court fully weighed the facts presented and the competing interests of all the parties, set forth the proper legal framework, including citing § 46b-56, and rendered a decision on the merits, articulating in detail the basis for its decision denying the defendant's motions.

Because the court properly exercised its decision-making authority, we summarily reject the defendant's reliance upon cases in which this court or our Supreme Court have reversed a family court's order on the ground that the court had improperly delegated a core decision-making function to a party not "clothed with judicial authority." *Valante* v. *Valante*, supra, 180 Conn. 532–33; see also *Nashid* v. *Andrawis*, supra, 83 Conn. App. 120–21; *Weinstein* v. *Weinstein*, supra, 18 Conn. App. 628–29. The present case is wholly inapposite to those cited by the defendant. In each of the cases cited by the defendant, the court removed itself entirely from the decision-making process by permitting legal issues

to be resolved through binding arbitration that was subject to limited judicial review; see *Nashid* v. *Andrawis*, supra, 120–21; or by delegating the court's authority and obligation to render a binding decision to a family relations officer; see *Valante* v. *Valante*, supra, 532–33; or to a guardian ad litem. See *Weinstein* v. *Weinstein*, supra, 628–29. Unlike in those cases, the court in the present case properly considered and fully resolved the custody and visitation issues before it by rendering a decision on the defendant's motions and the relief requested therein.

Simply put, rather than delegating its responsibility, the court exercised its authority and met its obligation to decide issues of custody and visitation by denying the defendant's motions. This adjudication by the court was the antithesis of a delegation because it plainly decided that the defendant should not have any *right* to custody or visitation. The fact that the court's order left open the possibility of voluntary visits at the discretion of the teenagers does not transform the court's decision-making into impermissible delegation.

The court went to great lengths to consider the potential benefits the children might gain from independently reestablishing some relationship with the defendant while recognizing that ordering visitation, at this late stage, in light of the children's deeply ingrained attitudes, was unlikely to magically heal their fractured relationship with the defendant. The court gave apt consideration to the children's desires to have some control over their lives and the people with whom they interact. It was entirely appropriate, for the reasons stated by the court, for it to have considered that the children were teenagers and to give considerable weight to their opinions and desires to control their own destinies.

Ultimately, it was the court's judicial determination that the best interests of the children required that the

defendant's physical access to them be voluntary in nature, at the choosing and direction of the children. Such a decision avoided the setting of an arbitrary and inflexible visitation schedule or reunification regime, which the family's history suggests would very likely lead to further conflicts, and, instead, encouraged and facilitated a voluntary path to reunification while at all times making clear that the defendant had no legal rights in this regard.

Finally, the court correctly, and on numerous occasions throughout its decision, acknowledged and gave due consideration to its duty to craft orders that took into consideration both the best interests of these particular children and the well established public policy that children of divorce are usually best served by maintaining a meaningful relationship with their noncustodial parent. In the present case, in which those considerations often suggested divergent paths, the court did an admirable job in taking a balanced approach. The court recognized that the children would benefit from a relationship with the defendant and squarely placed much of the blame for a lack of such a relationship at the feet of the plaintiff. Nevertheless, the court could not ignore the defendant's own poor behavior or the detrimental effect that would result from removing the children from the plaintiff and forcing them into one of the requested programs.

In sum, the defendant has failed to demonstrate that the court improperly delegated its judicial function. He also has failed to show that the court abused its discretion by failing to consider the best interests of the children or any established public policy. The defendant's claim, accordingly, fails.

II

The defendant next claims that the court improperly relied upon events that occurred between 2004 and 2007

in reaching its decision to deny his motions, disregarding what he characterizes as an indication to the parties during the evidentiary hearing that such evidence was too remote and insufficiently weighty for proper consideration by the court. We are not persuaded.

In support of this claim, the defendant focuses our attention to an instance during the presentation of evidence in which the court attempted to encourage the parties not to focus upon minute details of long past events but upon the presentation of the evidence most likely to be germane to the important decision facing the court. Specifically, at one point in the proceeding, the self-represented plaintiff, who is not an attorney, was cross-examining the defendant about details of his 2004 assault of her, attempting to demonstrate that he had made false statements about the cause of her injuries, something he had admitted during direct examination. When the cross-examination began to falter following an objection regarding the admission of details of a Department of Children and Families report, the following colloquy occurred:

"The Court: Let me say this. I recognize and do not mean to make any statements about how important this event has been in your dissolution proceedings and in the various claims about visitation and access. But it is now eleven years ago.

"So for purposes of this hearing about what's to happen next, it has become remote in time. Yes, it informs your consequential actions from it. But the details of what was said to whom in 2004 and the accuracy of those statements today is perhaps not as weighty as you might feel them to be.

"[The Plaintiff]: My—thank you, Your Honor. My reasoning is to bring up the veracity of [the defendant] in situations.

"The Court: I hear you, but he has admitted that he made false statements already.

"[The Plaintiff]: Okay. Thank you, Your Honor.

"The Court: That this was not true.

"[The Plaintiff]: Thank you, Your Honor. I will move on."

The defendant also directs our attention to an exchange that occurred during a discussion regarding scheduling, in particular, the plaintiff's list of witnesses she potentially might call for the purpose of authenticating documents. After agreeing to withdraw a number of the witnesses, the following colloquy occurred:

"[The Defendant's Counsel]: Okay. I don't object to Mr. Magnano as a witness, even though I think—

"[The Plaintiff]: I will withdraw him at this point. I think Your Honor [has] made it abundantly clear that you would like the further—

"The Court: I'm more interested in the more recent than—I don't mind having a summary of the past events—

"[The Plaintiff]: A mosaic?

"The Court: —but I don't know that it's necessary to prove each and every one of them now."

Having thoroughly reviewed the record, we conclude that the defendant misconstrues the nature and import of the preceding colloquies. As previously observed, in matters involving custody and visitation, the court properly exercises its discretion by "weighing all the facts and circumstances of the family situation." *Gallo* v. *Gallo*, supra, 184 Conn. 44. The court did so in the present case. We are not aware of any point during the proceedings in which the court indicated that it would not consider or rely upon evidence occurring in or

before 2007, as the defendant suggests, or that the court otherwise precluded or limited the scope of the parties' presentation of evidence.

Instead, the court was simply trying to encourage the parties to focus on the most relevant facts relating to the current feelings and conduct of the parties. In doing so, the court never indicated that the historical facts were irrelevant or that the parties were precluded entirely from offering evidence regarding them.

The trial court is responsible for the orderly and efficient management of its docket. See *Sowell* v. *DiCara*, 161 Conn. App. 102, 132, 127 A.3d 356 ("[m]atters involving judicial economy, docket management [and control of] courtroom proceedings . . . are particularly within the province of a trial court" [internal quotation marks omitted]), cert. denied, 320 Conn. 909, 128 A.3d 953 (2015). Accordingly, it is not improper or surprising that some guidance from the court was necessary and appropriate to maintain an orderly and timely presentation of the evidence in the present case.

We conclude that the court properly admitted and considered all relevant evidence presented in reaching its decision. The defendant has failed to demonstrate that the court abused its discretion in this regard and, accordingly, we reject his claim.

III

The defendant also claims that the court improperly considered and adopted the recommendations made by Snearly, the children's guardian ad litem, because, according to the defendant, she "chose to function as an attorney for the minor children instead of fulfilling her obligations as [a] guardian ad litem." The record does not support this claim.

We agree with the defendant that the role and function of a guardian ad litem for a minor child is distinct

from that of an attorney for a minor child. "Typically, the child's attorney is an advocate for the child, while the guardian ad litem is the representative of the child's best interests." (Internal quotation marks omitted.) *Ireland* v. *Ireland*, 246 Conn. 413, 439, 717 A.2d 676 (1998). It is axiomatic, however, that, in making a final decision regarding custody and visitation, "[a] court is permitted to seek advice, and accept recommendations, from the guardian ad litem." *Keenan* v. *Casillo*, 149 Conn. App. 642, 661, 89 A.3d 912, cert. denied, 312 Conn. 910, 93 A.3d 594 (2014).

The defendant has not directed our attention to any factual findings of the court or other evidence in the record before us that would support his assertion that Snearly blindly advocated for the children rather than exercised her own discretion in making the recommendations that she did. The mere fact that her recommendations that the defendant's motions be denied aligned with the wishes of the children does not support a conclusion that Snearly abandoned her role as a guardian ad litem for the children to don the mantle of their legal advocate or that her recommendations could not properly be considered by the court.

Furthermore, there is nothing to support the assertion that the court simply adopted Snearly's recommendations in the present case. Snearly testified during the hearing, detailing her investigation and interactions with the children. She also made recommendations, both orally and in writing, about what, in her opinion, would be in the children's best interests with respect to visitations with the defendant and further reunification efforts. Specifically, Snearly testified that the children did not want to be forced by the court to have visitations with the defendant and that they would be emotionally devastated if that happened. She indicated that any attempt at forced reunification would be intensely upsetting for the children. She indicated that forced

participation in the Family Bridges reunification program would "turn their entire lives completely upside down at a very detrimental point in their life and development."

Unquestionably, the court considered Snearly's opinion as a guardian ad litem as part of its consideration of the record as a whole. The court never indicated at any point, however, that it was simply adopting Snearly's recommendations wholesale. In fact, the court stated: "The [guardian ad litem's] recommendation demonstrates her compassion for her wards and the pain they have suffered. It also *assists* the court in considering the parties' claims for relief and what remedy, if any, is available for this group of adults and two children who stand in the middle of their protracted conflict." (Emphasis added.) We construe this as an indication by the court that Snearly's recommendation assisted the court in its own independent calculus of what relief would be in the best interests of the children. We thus reject as factually unsupported the notion that the court adopted Snearly's recommendations.

Finally, Snearly's testimony and opinion were subject to cross-examination by the defendant's counsel, who was free to explore the defendant's allegations of bias and failure to adhere to her obligations as a guardian ad litem. Moreover, in addition to Snearly's recommendations, the court also carefully considered and discussed in its decision other contrasting viewpoints, including those from Garber, who recommended and advocated for the Building Bridges program favored by the defendant. Ultimately, our review of the record demonstrates that the court reached its own independent decision regarding what would be in the best interests of the teenaged children moving forward, and did not simply adopt the recommendation of Snearly as suggested by the defendant. Accordingly, we reject the claim and its underlying premise. To the extent that

the defendant truly believes that Snearly failed to exercise her obligations as a guardian ad litem properly, other avenues were available for addressing those concerns, such as seeking her removal and replacement. Such allegations simply do not form a basis for reversing the decision of the trial court in the present case.

IV

Finally, the defendant claims that, in reaching its decision, the court improperly relied on an erroneous factual finding, namely, that the parties' reconciliation therapist, Smith, had ended reconciliation therapy with the parties. The defendant argues that the finding is not supported by the record and is in direct contradiction to Smith's own testimony. He also argues that the alleged error was "so material to the heart of the matter at issue as to have changed the outcome of the trial." We again find the defendant's claim wholly unpersuasive.

As previously stated, in reviewing a court's decision in family matters, this court defers to the facts as found by the trial court unless those findings are clearly erroneous. "A finding of fact is clearly erroneous when there is no evidence in the record to support it . . . or when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." (Internal quotation marks omitted.) *Adams* v. *Adams*, 93 Conn. App. 423, 427, 890 A.2d 575 (2006). "Where, however, some of the facts found [by the court] are clearly erroneous and others are supported by the evidence, we must examine the clearly erroneous findings to see whether they were harmless, not only in isolation, but also taken as a whole. . . . If, when taken as a whole, they undermine appellate confidence in the court's fact finding process, a new hearing is required." (Internal quotation marks omitted.) *Lambert* v. *Donahue*, 78 Conn. App. 493, 507, 827 A.2d 729 (2003).

The defendant directs our attention to certain passages in the trial court's decision in which the court discusses the agreement the parties reached in 2013 to enter into reunification therapy with Smith. The court indicated that the parties had only four sessions, they were very stressful for the children, and "[t]he children's symptoms of distress, in addition to the conduct of the mother, caused the professionals to end the attempt at reunification. There was no rapprochement between the children and their father possible at this late date when they were thirteen." The gravamen of these findings, when read in context, is that the parties had been unable to benefit in any meaningful way from their reunification therapy sessions.

The defendant argues that it was a misrepresentation for the court to have stated that the professionals ended the therapy, pointing to testimony by Smith in which she stated that, in her opinion, she did not believe the parties had "reached an end" therapeutically and that the parties may have benefitted from different treatment approaches. In the same testimony, however, Smith also acknowledged that she did not "know what happened because at that point [it] ended, but it just didn't go forward after that." Whether therapy was in fact ended by the professionals or whether the parties simply stopped attending on their own, there is nothing in the court's analysis that suggests that this was an important or material factor in its decision to deny the motions of the defendant. It was the failure of the therapy to alter the destructive behaviors of the parties that led the court to its conclusion that more of the same was unlikely to be in the best interests of the children. Accordingly, even if we were to agree that the court's finding that Smith ended reunification therapy was a factual error, when the court's remaining unchallenged findings are considered as a whole rather than focusing on that one alleged inaccuracy, there is ample

support in the record for the relief ordered by the court. This includes its decision regarding the defendant's future access to his teenaged children, with whom he has never developed any meaningful relationship. Because the claimed error does not undermine our confidence in the court's overall fact-finding process, we conclude that any error was harmless.

The judgment is affirmed.

In this opinion the other judges concurred.

STATE OF CONNECTICUT *v.* RONALD G. SMITH (AC 39690)

Alvord, Keller and Lavery, Js.

Syllabus

Convicted of the crimes of sexual assault in the fourth degree, risk of injury to a child, sexual assault in the first degree and sexual assault in the second degree, the defendant appealed. During trial, the state had offered, and the court admitted into evidence, testimony that during a taped police interview, the defendant, after answering most of the police officers' questions, refused to answer further questions, never claimed the minor victim was lying about the allegations, refused to speak further and exercised his right to remain silent. The court also had admitted into evidence from the state a video recording of the interview depicting the defendant's invocation of his *Miranda* rights to remain silent and to an attorney. On appeal, the defendant, relying on *Doyle* v. *Ohio* (426 U.S. 610), claimed for the first time that his constitutional right to remain silent was violated when the state introduced evidence of his post-*Miranda* silence. *Held* that the defendant could not prevail on his unpreserved claim that his constitutional right to remain silent was violated, as any claimed error in the court's admission of the challenged evidence was harmless beyond a reasonable doubt: although the defendant's invocation of his rights was described by more than one witness and depicted on a video presented in evidence, the prosecutor did not thereafter focus or comment on the defendant's silence, made no suggestion to the jury that it should draw an inference of guilt based on the defendant's exercise of his *Miranda* rights, made no comment on the defendant's invocation of his *Miranda* rights during closing argument and did not otherwise highlight the challenged evidence to the jury, and the challenged evidence was wholly unrelated to the defendant's exculpatory theories advanced at trial, which the jury reasonably may have found

as weak given the inconsistent evidence presented in support of them; moreover, apart from the challenged evidence related to the defendant's post-*Miranda* silence, the state established the guilt of the defendant beyond a reasonable doubt, as the victim testified at length and in detail regarding the alleged assaults by the defendant, consistently identifying the defendant as his abuser to police, medical personnel, Department of Children and Families personnel and during his testimony at trial, and was able to provide locations where the abuse occurred both during interviews with the police and during his testimony at trial, and the state not only presented medical evidence that the victim had been sexually abused, but also presented evidence from which the jury reasonably could have determined the defendant was the abuser.

Argued November 29, 2017—officially released March 13, 2018

Procedural History

Information in the first case charging the defendant with the crimes of sexual assault in the fourth degree, risk of injury to a child and sexual assault in the first degree, substitute information in the second case charging the defendant with the crimes of sexual assault in the second degree and risk of injury to a child, and substitute information in the third case charging the defendant with the crimes of sexual assault in the first degree and risk of injury to a child, brought to the Superior Court in the judicial district of Hartford and tried to the jury before *Suarez*, *J.*; verdicts and judgments of guilty, from which the defendant appealed. *Affirmed.*

Richard S. Cramer, for the appellant (defendant).

Robert J. Scheinblum, senior assistant state's attorney, with whom, on the brief, were *Gail P. Hardy*, state's attorney, *Debra Collins*, senior assistant state's attorney, and *Toni M. Smith-Rosario*, senior assistant state's attorney, for the appellee (state).

Opinion

ALVORD, J. The defendant, Ronald G. Smith, appeals from the judgments of conviction, rendered after a jury trial, of one count of sexual assault in the fourth degree

in violation of General Statutes § 53a-73a (a) (1) (A), six counts of risk of injury to a child in violation of General Statutes § 53-21 (a) (2), six counts of risk of injury to a child in violation of § 53-21 (a) (1), two counts of sexual assault in the first degree in violation of General Statutes § 53a-70 (a) (2), and three counts of sexual assault in the second degree in violation of General Statutes § 53a-71 (a) (1). On appeal, the defendant, relying upon *Doyle* v. *Ohio*, 426 U.S. 610, 96 S. Ct. 2240, 48 L. Ed. 2d 91 (1976), claims that the state violated his constitutional right to remain silent when it introduced evidence of the defendant's post-*Miranda* silence.[1] We conclude that any claimed error was harmless beyond a reasonable doubt. Accordingly, we affirm the judgments of the trial court.

The jury reasonably could have found the following facts. The defendant met the victim[2] between November, 2007 and November, 2008, when the victim was nine years old. At that time, the victim lived in an apartment in Hartford with his mother, his grandmother, and his younger sibling, who was the child of the defendant and the victim's mother. The defendant was dating the victim's mother and would spend time daily at the apartment.

On one occasion, when the victim was nine years old, he was watching television in the bedroom he shared with his mother when the defendant came into the room to play wrestle. The defendant then took his penis out, rubbed it on the victim's arm, and tried to rub it near the victim's mouth. The victim tried to push away from the defendant. The victim's mother entered

[1] See *Miranda* v. *Arizona*, 384 U.S. 436, 478–79, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

[2] In accordance with our policy of protecting the privacy interests of the victims of sexual assault and the crime of risk of injury to a child, we decline to identify the victim or others through whom the victim's identity may be ascertained. See General Statutes § 54-86e.

the room and asked what the defendant was doing. Both the defendant and the victim said that the defendant was not doing anything. The victim did not tell his mother what the defendant did to him because "it just felt weird and she wouldn't have believed me anyways," and "she would take his side over mine sometime."

The defendant lived with his mother and would bring the victim to his house to play with another of the defendant's children. On one such occasion, the victim, who was ten years old at the time, was in the basement at the defendant's house when the defendant told the victim to come near him and to pull his pants down and lie on the bed. The defendant pulled his pants down, spit on his hand, rubbed his penis, and anally penetrated the victim. When the victim tried to sit up to get away, the defendant laid the victim against the bed face down and held him down. The victim made a whining noise, and the defendant told him to "shut up." The defendant ejaculated into the victim's anus. After this incident, the victim was in pain and would see blood when he used the bathroom. The victim did not tell his mother what happened because he did not think she would believe him. The defendant anally penetrated the victim on more than twenty occasions when the victim was ten years old. The victim did not tell anyone the defendant was doing this because he "didn't want anyone to think [he] was gay . . . ." The defendant offered to give and gave the victim toys and money in exchange for letting the defendant perform these acts.

The defendant fathered a child with a woman who lived in Windsor, and the defendant would bring the victim to visit that child at the woman's home (Windsor home). On one occasion before Christmas when the victim was eleven or twelve, the defendant bought the victim an iPod and told the victim "now you have to let me fuck you." The defendant drove the victim to the parking lot of the Windsor home and covered the

back seat windows of the car. The defendant spit on his hand, rubbed his penis, and anally penetrated the victim. The defendant ejaculated, and then drove the victim home and told the victim to tell his mother that they were loading the defendant's truck. Between November, 2009 and January, 2011, the defendant continued to anally penetrate the victim, and did so more than ten times in the parking lot of the Windsor home.

On one occasion, when the victim was thirteen years old, the defendant asked the victim's mother if he could take the victim to help him load his truck. The defendant took the victim to a motel in Windsor Locks, showed the victim pornography on the television and told the victim "to do the same thing that's in the porno." The defendant again spit on his hand, rubbed his penis, and anally penetrated the victim. On another occasion, the defendant put his penis into the victim's mouth and ejaculated into his mouth. Afterward, the defendant bought the victim a BB gun.

In April or May, 2013, the victim told his mother what the defendant was doing to him, but when his mother said she would call the cops, the victim said "never mind." The victim, wanting the abuse to stop and in an attempt to break up the defendant and his mother, also told his mother that the defendant was "cheating on her," and testified that he "was cheating on her with me really."

On one occasion in August, 2013, the defendant again took the victim, who was fourteen at the time, to a motel in Windsor Locks. The defendant told the victim to take off his clothes, laid the victim across the bed, and anally penetrated the victim. The incident lasted "longer than before" and "hurt more." The victim told the defendant to stop but he did not. The victim told the defendant he "was finished with it" and "wasn't doing that anymore," and the defendant laughed. After

this incident, the victim felt a painful "bubble inside of [his] anus." He told his mother that he had hemorrhoids from a bicycle accident and asked to go to the family doctor. The victim saw Idaresit Udo, a physician, on August 21, 2013. The victim did not tell the doctor about the abuse because his mom was present. The victim went home and his symptoms worsened to the point where he experienced difficulty getting out of bed.

Also in August, 2013, the Department of Children and Families (department) became involved with the victim after receiving an anonymous report that his mother was leaving younger children alone in the home with the victim throughout the night. When the department responded to the home on or about August 26, 2013, the victim was observed to be in pain. The next day, Dante Rabb, an investigator with the department, visited the victim's home. He observed the victim lying in bed and crying in pain, saying his buttocks area hurt. Rabb asked the victim if he wanted to see a doctor and he hesitated, looked at his mother, and finally said yes. Rabb and the victim's grandmother brought him to the doctor's office. The victim's mother did not accompany them because she stated she did not have time. The victim saw Fonda Gravino, a physician, and told her that the defendant had been having anal intercourse with him. Dr. Gravino performed a physical exam and noted abrasions and ulcerations, which injuries she concluded were a result of child sexual abuse. Dr. Gravino and the victim telephoned the victim's mother and the victim told his mother that the defendant had been sexually abusing him for the past five years.

The victim's mother telephoned the Hartford Police Department to report the sexual assault, and Officer Tyrone Boland responded. Boland transported the victim from Dr. Gravino's office to the Connecticut Children's Medical Center, where he was admitted. During

the drive, the victim told Boland that his mother's boyfriend had sexually assaulted him. While at the hospital, the victim's mother asked Rabb and Boland how long it was going to take and said that she had "things to do." Also at the hospital, the victim told others, including Rabb and Nina Livingston, a child abuse pediatrician, that the defendant had been sexually abusing him for years. Dr. Livingston diagnosed the victim with "suspected sexual abuse," and concluded that the victim's injuries were not caused by a bicycle accident. Dr. Livingston further observed symptoms of psychological distress that could have been consistent with post-traumatic stress and depression and recommended trauma-focused counseling.[3] The victim remained in the hospital for almost a week, and was diagnosed with a sexually transmitted disease. After the victim was released from the hospital, he went to live with his aunt.

The defendant voluntarily submitted to interviews with both the Hartford and Windsor Police Departments, and officers from both departments submitted arrest warrant applications. Later, on December 23, 2013, members of a police fugitive task force arrived at the Windsor home, where the defendant was located. After several hours of refusing to open the door to the task force, the defendant was arrested. The defendant elected a jury trial.

During trial, the state presented the testimony of Boland and Detective Shawn Ware, both of the Hartford Police Department, and Officer Russell Winiger of the Windsor Police Department. Boland and Ware testified regarding the September 10, 2013 interview (Hartford interview). Ware testified that the defendant drove himself to the Hartford Police Department on that date.

[3] Specifically, Dr. Livingston noted that the victim's symptoms included: "appetite and sleep disturbance, irritability, having hyperarousal and having difficulty sleeping because he was so scared and aroused. Having flashbacks of the abuse and all of those symptoms taken together could be consistent with post-traumatic stress and with depression." The victim told Dr. Livingston that he had had "thoughts of suicide at one time."

Boland, Detective Danny Johnson, and Ware were present for the Hartford interview. Ware advised the defendant of his *Miranda* rights, and the defendant signed a waiver of rights form.[4] The form was entered into

[4] The following colloquy took place between the prosecutor and Ware:

"Q. Now, did the defendant invoke his right to speak with an attorney at any time during the interview?

"A. Yeah. Sometime in the middle of the interview.

"Q. And when he invoked his right to speak with an attorney, what occurred?

"A. The interview stopped.

"Q. And did the—at any time did the defendant invoke his right to remain silent during the interview?

"A. No.

"Q. And did the defendant agree to answer your questions without any attorney being present up until the point he invoked his right to speak with an attorney?

"A. Yes.

"Q. And did you promise the defendant anything in return for making his statement?

"A. No.

"Q. And did you coerce the defendant in any way into making his statement with threat or action?

"A. No, ma'am.

"Q. And to the best of your knowledge was the defendant's statement freely and voluntarily given?

"A. Yes, ma'am.

"Q. But did the defendant ever ask to stop the questioning?

"A. No.

"Q. I thought you stated earlier—

"A. I'm sorry.

"Q. —he did stop at some point?

"A. Yes. He did stop at some point. I'm sorry.

"Q. And when he stopped questioning what occurred?

"A. The interview stopped.

"Q. Was he free to leave at that point?

"A. Yes.

"Q. And did he leave?

"A. Yes.

"Q. Did the defendant make a statement in response to each and every one of your questions up and to the point he stopped the interview?

"A. Yes, ma'am.

"Q. And did you have the defendant sign a waiver of rights form prior to your interview with him?

"A. Yes."

evidence without objection from defense counsel. Ware described the defendant's demeanor during the Hartford interview, stating that he went from cooperative to standoffish. Ware testified that at no time did the defendant ever claim that the victim was lying about the allegations.[5] Defense counsel did not object to Ware's testimony.

The Hartford interview was recorded and the video recording was entered into evidence without objection and played for the jury. The video captured the full Hartford interview of the defendant, including the defendant's statements at the end of the recording in response to the question whether the defendant "ever took [the victim] to a hotel where there was a guy there that said to you why are you bringing a kid here in Windsor." The defendant responded that he had to "stop right now." He further stated that "[t]his is a serious accusation" and "[w]hat I say now will be used against me period. Whether I'm right or wrong right now. . . . [I]f I answer it wrong or incorrectly and it proved to be otherwise then, you know, how can I defend myself properly." He mentioned a lawyer, specifically stating at one point: "Can't answer it. I have to get a lawyer." At no point during the presentation of the video did

[5] The following colloquy took place between the prosecutor and Ware:

"Q. Now, at the beginning of your interview with the defendant, what did you personally observe his demeanor to be?

"A. Very cooperative.

"Q. Does—did his demeanor remain cooperative throughout the interview?

"A. No, ma'am.

"Q. When did it change?

"A. When I asked him the allegations of what he did to [the victim].

"Q. And how did you personally observe his demeanor to change?

"A. He became standoffish, a pause in his questions.

"Q. Now, at any time during your discussion with the defendant, did the defendant ever claim that the victim was lying about the allegations against him or making these allegations up?

"A. No, ma'am."

defense counsel object. The court took a recess and then the prosecutor resumed direct examination. On cross-examination, defense counsel asked Ware whether it was fair to say that the defendant never admitted during the Hartford interview that anything occurred between him and the victim.[6]

Boland was also present during the Hartford interview but did not question the defendant. Boland testified that the defendant answered most of the questions

[6] The following colloquy took place between defense counsel and Ware:

"Q. Is it fair to say that even though the interview was cut short that [the defendant] indicated in a broad spectrum that nothing, no incidents of a sexual nature ever occurred between him and [the victim]?

"A. Sir, he had a chance to explain it, sir.

"Q. Excuse me?

"A. He had a chance to explain, sir.

"Q. Oh, I understand, but that wasn't my question. Was there ever any representation, statement by [the defendant] that—no, nothing ever occurred between [the victim] and [the defendant]?

"A. You're right, sir, he didn't say that?

"Q. What?

"A. He didn't say that, sir.

"Q. What did he say? In other words, was the question never raised or did he say no, like, nothing ever happened, but you would have like[d] to continue this interview, I understand—

"A. Yes.

"Q. —is that a fair statement?

"A. Yes, sir.

"Q. Sure. Okay. But in the interview, it came to a point where at least [the defendant] knew why he was there?

"A. Yes, sir.

"Q. Right. Okay. And in a broader sense not—you would have like[d] to go on and have more questions, but it's fair to say he never admitted that anything occurred between anything of a sexual nature ever occurred between [the defendant] and [the victim]; is that correct?

"A. Yes, sir.

"Q. In the broadest of your questions, did you ever—did he ever in a sense deny in a broad sense nothing, nothing ever happened?

"A. No, sir.

"Q. Never—never—is it fair to say that [the defendant's] demeanor from your perspective or it's a rather long interview, would you describe as appearing as you perceived him in watching it again today from your perspective was he at least up until the point where it was stopped was he chatty, nervous, defiant; how would you describe him in that interview?

"A. Up until that point, sir, he was very cooperative.

"Q. Cooperative?

posed by Ware, but "[t]owards the end he decided he wasn't going to answer any more questions." Boland stated that the defendant did not claim during the Hartford interview that the victim was lying about the allegations.[7] Defense counsel did not object to Boland's testimony on this point. On cross-examination, in response to questions by defense counsel, Boland testified that the interviewing officers did not ask the defendant whether he had any sexual activity with the victim, because they "never got to that point."[8]

"A. Yes, sir.

"Q. I have no additional questions. Thank you."

[7] The following colloquy took place between the prosecutor and Boland:

"Q. Did the defendant answer all of the questions posed to him by Detective Ware that day?

"A. Mostly.

"Q. And then what occurred?

"A. Towards the end he decided he wasn't going to answer any more questions.

"Q. And officer, at any time during the interview in which you were present, did the defendant ever claim that the victim was lying about the allegations against him or making these allegations up?

"A. No, he did not."

[8] The following colloquy took place between defense counsel and Boland:

"Q. All right. Were any of the questions essentially did you have any sexual activity with [the victim]? [Were] any of the questions essentially . . . that question?

"A. We never got to that point.

"Q. Did [the defendant] deny that he had any sexual activity with [the victim]?

"A. No, he did not.

"Q. And so he—what were the essential questions that you asked him before the interview terminated?

"A. Most of the questions we wanted to know what the relationship was as to, you know, how they interacted with each other. The relationship with [the victim's mother] and that sort of stuff. He shut down when we started posing more direct questions.

"Q. But is it fair to say that he never stated that there was any inappropriate activity between [the victim] and himself?

"A. We never got to that point.

"Q. Never got to that point. And he never was casting dispersions on [the victim] that he's a liar or anything like that?

"A. No, he did not.

"Q. Is it fair to say the interview got to a certain point and then it ended?

"A. He ended it, yes.

"Q. I have no additional questions."

The state also presented the testimony of Winiger, who interviewed the defendant at the Windsor Police Department on October 10, 2013 (Windsor interview). Winiger called the defendant and asked if he would come to the police department to speak with him. The defendant drove himself to the Windsor interview. Winiger advised the defendant of his *Miranda* rights.[9] The defendant signed a waiver of rights form, which was entered into evidence without objection. Winiger testified regarding the Windsor interview, and explained

[9] The following colloquy took place between the prosecutor and Winiger:
"Q. Now, did the defendant invoke his right to speak with an attorney at any time during the interview?
"A. Right at the end of the interview.
"Q. And did the defendant invoke his right to remain silent at any time during the interview?
"A. He stated to me this interview was over.
"Q. Did the defendant agree to answer your questions without an attorney and without the presence of an attorney until the point that he stated he wanted the interview to end?
"A. Oh, yes, ma'am, he did.
"Q. And did you promise the defendant anything in return for making his statement?
"A. No.
"Q. And did you coerce the defendant in any way to make his statement under threat or promise?
"A. No, ma'am.
"Q. To your best of your knowledge was the defendant's statement freely and voluntarily given?
"A. Yes.
"Q. Now, at some point did the defendant stop the questioning?
"A. Yes, he did.
"Q. And what did he say?
"A. When I brought out what the allegation was against him he told me that I was trying to trick him just like the Hartford police had done and he said this interview is over.
"Q. And when he said this interview is over what occurred?
"A. I got up from my chair, I opened the door, I escorted him to the front lobby, I opened the door for him, I watched him get in the car that he came in and he left.
"Q. But when he was answering questions, did the defendant make a statement in response to each one of your questions?
"A. Yes, he did.
"Q. And did you have the defendant sign a waiver of rights form prior to your interview with him?
"A. I did."

how the interview concluded. Specifically, he testified that the defendant told him that he had a sexually transmitted disease. When Winiger told the defendant that the victim also had a sexually transmitted disease, the defendant ended the Windsor interview.[10] At no time during Winiger's testimony did defense counsel object.

At the conclusion of trial, the jury found the defendant guilty of all charges. The court sentenced the defendant to a total effective sentence of forty-five years imprisonment. This appeal followed.

On appeal, the defendant claims that the state violated his constitutional right to remain silent, as set out in *Doyle*, by introducing evidence of his post-*Miranda* silence. Specifically, the defendant challenges the intro-

[10] The following colloquy took place between the prosecutor and Winiger:

"Q. Did you tell the defendant that [the victim] had also been diagnosed with a sexually transmitted disease?

"A. Not til after he had made that admission.

"Q. Okay. And after you notified him of that what was his response to hearing that [the victim] had been diagnosed with a sexually transmitted disease?

"A. That's when the interview stopped. That's when he said that I was trying to trick him just like the Hartford cops did and he said the interview was over and he got up and that was the end of it.

"Q. Now, did you make the defendant aware of the allegations against him by [the victim]?

"A. Yes, I did.

"Q. And what did you tell the defendant those allegations were?

"A. I told him that he had made the allegation that he had sexually abused the boy.

"Q. Okay. And what was the defendant's physical response to your informing him that he had been alleged of sexual abuse of [the victim]?

"A. That was when we went back to when I brought up the first initial explanation of when he had that kind of defeated let the air out type of thing rounded his shoulders.

"Q. Now, at the completion of your discussion with the defendant, did you give the defendant the opportunity to give a signed, sworn, written statement?

"A. As I was interviewing him I had been typing a statement on the computer in the interview room, but when he said that we were done that was it, so I wasn't able to get him to, you know, give a statement or sign anything or to make anything official.

duction of the following evidence: (1) Boland's testimony that the defendant refused to answer further questions and that he never claimed the victim was lying about the allegations; (2) Ware's testimony that the defendant refused to speak further; (3) the video recording of the Hartford interview depicting the defendant's invocation of his right to remain silent and his right to an attorney; and (4) Winiger's testimony that the defendant exercised his right to remain silent.[11]

"In *Doyle* . . . the United States Supreme Court held that the impeachment of a defendant through evidence of his silence following his arrest and receipt of *Miranda* warnings violates due process. The court based its holding [on] two considerations: First, it noted that silence in the wake of *Miranda* warnings is insolubly ambiguous and consequently of little probative value. Second and more important[ly], it observed that while it is true that the *Miranda* warnings contain no express assurance that silence will carry no penalty, such assurance is implicit to any person who receives the warnings. In such circumstances, it would be fundamentally unfair and a deprivation of due process to allow the arrested person's silence to be used to impeach an explanation subsequently offered at trial." (Internal quotation marks omitted.) *State* v. *Holmes*, 176 Conn. App. 156, 189–90, 169 A.3d 264, cert. granted on other grounds, 327 Conn. 984, 175 A.3d 561 (2017); see also *State* v. *Ramos*, 178 Conn. App. 400, 408–409, 175 A.3d 1265 (2017), cert. denied, 327 Conn. 1003,

"Q. Now, at any time during your discussions with the defendant, did the defendant ever claim that the victim was lying about the allegations against him or making these allegations up?

"A. No, ma'am, I don't recall that."

[11] The defendant does not claim that the state violated *Doyle* by introducing the two signed waiver of rights forms into evidence. In his reply brief, the defendant, discussing the waiver forms, states "[o]nce again, it is not the initial waiver by [the] defendant which violates *Doyle*, but the subsequent exercise of his constitutional right to terminate the interview."

A.3d (2018). "A *Doyle* violation also encompasses a prosecutor's comment upon a defendant's statement requesting an attorney. . . . With respect to post-*Miranda* warning . . . silence does not mean only muteness; it includes the statement of a desire to remain silent, as well as of a desire to remain silent until an attorney has been consulted." (Citation omitted; internal quotation marks omitted.) *State* v. *Daugaard*, 231 Conn. 195, 211, 647 A.2d 342 (1994), cert. denied, 513 U.S. 1099, 115 S. Ct. 770, 130 L. Ed. 2d. 666 (1995).

The defendant acknowledges that he did not preserve his *Doyle* claim at trial and now seeks review pursuant to *State* v. *Golding*, 213 Conn. 233, 239–40, 567 A.2d 823 (1989), as modified by *In re Yasiel R.*, 317 Conn. 773, 781, 120 A.3d 1188 (2015).[12] "[T]he inability to meet any one prong requires a determination that the defendant's claim must fail. . . . The appellate tribunal is free, therefore, to respond to the defendant's claim by focusing on whichever condition is most relevant in the particular circumstances." (Citation omitted; internal quotation marks omitted.) *State* v. *Soto*, 175 Conn. App. 739, 755, 168 A.3d 605, cert. denied, 327 Conn. 970, 173 A.3d 953 (2017). The first two prongs of the *Golding* analysis are satisfied because the record is adequate for our review and the defendant's claim that the state violated his right to remain silent is of constitutional magnitude. See, e.g., *State* v. *Lockhart*, 298 Conn. 537,

[12] "[A] defendant can prevail on a claim of constitutional error not preserved at trial only if *all* of the following conditions are met: (1) the record is adequate to review the alleged claim of error; (2) the claim is of constitutional magnitude alleging the violation of a fundamental right; (3) the alleged constitutional violation . . . exists and . . . deprived the defendant of a fair trial; and (4) if subject to harmless error analysis, the state has failed to demonstrate harmlessness of the alleged constitutional violation beyond a reasonable doubt. In the absence of any one of these conditions, the defendant's claim will fail." (Emphasis in original; footnote omitted.) *State* v. *Golding*, supra, 213 Conn. 239–40, as modified by *In re Yasiel R.*, supra, 317 Conn. 781.

580, 4 A.3d 1176 (2010). We conclude that the defendant's claim fails under the fourth prong of *Golding* because if there was a *Doyle* violation, it was harmless beyond a reasonable doubt.

"*Doyle* violations are . . . subject to harmless error analysis. . . . The harmless error doctrine is rooted in the fundamental purpose of the criminal justice system, namely, to convict the guilty and acquit the innocent. . . . Therefore, whether an error is harmful depends on its impact on the trier of fact and the result of the case. . . . [B]efore a federal constitutional error can be held harmless, the court must be able to declare a belief that it was harmless beyond a reasonable doubt. . . . The state bears the burden of demonstrating that the constitutional error was harmless beyond a reasonable doubt. . . . That determination must be made in light of the entire record [including the strength of the state's case without the evidence admitted in error]." (Internal quotation marks omitted.) *State* v. *Jackson*, 150 Conn. App. 323, 358–59, 90 A.3d 1031, cert. denied, 312 Conn. 919, 94 A.3d 641 (2014); see also *State* v. *Montgomery*, 254 Conn. 694, 717–18, 759 A.2d 995 (2000) (*Doyle* violations subject to harmless error analysis).

"A *Doyle* violation may, in a particular case, be so insignificant that it is clear beyond a reasonable doubt that the jury would have returned a guilty verdict without the impermissible question or comment upon a defendant's silence following a *Miranda* warning. Under such circumstances, the state's use of a defendant's [post-*Miranda*] silence does not constitute reversible error. . . . The [error] has similarly been [found to be harmless] where a prosecutor does not focus upon or highlight the defendant's silence in his cross-examination and closing remarks and where the prosecutor's comments do not strike at the jugular of the defendant's story. . . . The cases wherein the error

has been found to be prejudicial disclose repetitive references to the defendant's silence, reemphasis of the fact on closing argument, and extensive, strongly-worded argument suggesting a connection between the defendant's silence and his guilt." (Internal quotation marks omitted.) *State* v. *Montgomery*, supra, 254 Conn. 718.

Our review of the record convinces us that the admission of the challenged evidence concerning the defendant's invocation of his rights was harmless beyond a reasonable doubt. In the present case, although there were multiple references to the defendant's invocation of his rights, the remaining considerations that factor into the analysis of harm weigh in favor of the conclusion that any claimed error was harmless beyond a reasonable doubt. Accordingly, we decline to decide whether the state committed a *Doyle* violation, and we conclude that any claimed error was harmless and would not have affected the verdict.[13] See, e.g., *State* v.

[13] The state argues that it "properly proffered [the challenged] evidence to explain the course of the police investigations and, therefore, did not violate *Doyle*." Our Supreme Court has recognized that "[r]eferences to one's invocation of the right to remain silent [are] not always constitutionally impermissible . . . [and are] allowed . . . in certain limited and exceptional circumstances. . . . Specifically, the state is permitted some leeway in adducing evidence of the defendant's assertion of that right for purposes of demonstrating the investigative effort made by the police and the sequence of events as they unfolded . . . as long as the evidence is not offered to impeach the testimony of the defendant in any way." (Citation omitted; internal quotation marks omitted.) *State* v. *Lockhart*, supra, 298 Conn. 581–82.

The state further argues that "[a]lthough the defendant refers to his statements that he had to 'stop' the interview as evidence of his invocation of this right to remain silent . . . these comments instead show his vacillation about participating in the interview," and claims that "*Doyle* and its progeny do not protect a defendant's 'selective silence.' " (Citation omitted; emphasis omitted.) See *State* v. *Ramos*, supra, 178 Conn. App. 409.

Because we conclude that any claimed error was harmless beyond a reasonable doubt, we need not reach whether introduction of the challenged evidence was permissible to demonstrate investigative efforts or because the defendant remained "selectively silent."

Francis, 83 Conn. App. 226, 236, 849 A.2d 873, cert. denied, 270 Conn. 912, 853 A.2d 529 (2004); see also *State* v. *Pepper*, 79 Conn. App. 1, 15, 828 A.2d 1268 (2003) ("[a]ssuming without deciding that the state violated *Doyle* in its question posed to the defendant, we conclude that any impropriety was harmless beyond a reasonable doubt"), *aff'd*, 272 Conn. 10, 860 A.2d 1221 (2004); *State* v. *Kuranko*, 71 Conn. App. 703, 711, 803 A.2d 383 (2002) ("[a]ssuming arguendo that a *Doyle* violation occurred" and concluding "that it was harmless beyond a reasonable doubt").[14]

Here, although the defendant's invocation of his rights was described by more than one witness and was depicted on a video presented in evidence,[15] the prosecutor did not thereafter focus or comment on the defendant's silence. The prosecutor made no suggestion to the jury that it should draw an inference of guilt

[14] "Although a finding of harmless error in a situation where the state improperly comments upon the defendant's postarrest silence is the exception to the rule, we find that the present case fits the exception rather than the rule." (Internal quotation marks omitted.) *State* v. *Williams*, 27 Conn. App. 654, 662, 610 A.2d 672, cert. denied, 223 Conn. 914, 614 A.2d 829 (1992).

[15] In addition to our conclusion that the admission of the challenged evidence was harmless beyond a reasonable doubt, we also conclude that the defendant waived his *Doyle* claim as to the evidence depicted in the video.

"A defendant in a criminal prosecution may waive one or more of his or her fundamental rights. . . . In the usual *Golding* situation, the defendant raises a claim on appeal which, while not preserved at trial, at least was not waived at trial." (Internal quotation marks omitted.) *State* v. *Hudson*, 122 Conn. App. 804, 813, 998 A.2d 1272, cert. denied, 298 Conn. 922, 4 A.3d 1229 (2010). "[A] constitutional claim that has been waived does not satisfy the third prong of the *Golding* test because, in such circumstances, we simply cannot conclude that injustice [has been] done to either party . . . or that the alleged constitutional violation . . . exists and . . . deprived the defendant of a fair trial . . . . To reach a contrary conclusion would result in an ambush of the trial court by permitting the defendant to raise a claim on appeal that his or her counsel expressly had abandoned in the trial court." (Citations omitted; emphasis omitted; internal quotation marks omitted.) *State* v. *Hampton*, 293 Conn. 435, 448–49, 988 A.2d 167 (2009).

"[W]aiver is [t]he voluntary relinquishment or abandonment—express or implied—of a legal right or notice. . . . In determining waiver, the conduct of the parties is of great importance. . . . [W]aiver may be effected by action of counsel. . . . When a party consents to or expresses satisfaction

based on the defendant's exercise of his *Miranda* rights. See *State* v. *Bereis*, 117 Conn. App. 360, 378, 978 A.2d 1122 (2009) (*Doyle* violation harmless where, inter alia,

with an issue at trial, claims arising from that issue are deemed waived and may not be reviewed on appeal. . . . Thus, [w]aiver . . . involves the idea of assent, and assent is an act of understanding." (Internal quotation marks omitted.) *State* v. *Cancel*, 149 Conn. App. 86, 100, 87 A.3d 618, cert. denied, 311 Conn. 954, 97 A.3d 985 (2014).

The state relies on *State* v. *Boyd*, 295 Conn. 707, 750 n.26, 992 A.2d 1071 (2010), cert. denied, 562 U.S. 1224, 131 S. Ct. 1474, 179 L. Ed. 2d 314 (2011), in support of its argument that the defendant waived his *Doyle* claim by his counsel's representation at trial that he did not object to the introduction of the video. In *Boyd*, a detective testified as to the defendant waiving his *Miranda* rights and talking with the police. "Interspersed among . . . exculpatory statements," the defendant had also stated that he was not ready to "tell the police everything that he knew about the murder and that he was not willing to discuss the crime scene." Id., 750. In a footnote, our Supreme Court stated: "Defense counsel expressly stated that she did not object to [the detective's] testimony that, after the defendant told [the detective] that his question whether the defendant had been in Norwalk with the victim on the night of the murder was a very good one, the defendant stated that he was not going to discuss the crime scene. The defendant's objection to that testimony was, therefore, waived." Id., 750 n.26; see also *State* v. *Cancel*, supra, 149 Conn. App. 101 (defendant waived fourteenth amendment due process claim regarding joinder where, inter alia, defense counsel "expressly stated that there was no objection to the motion"); *State* v. *Hudson*, supra, 122 Conn. App. 814 (confrontation claim was waived, when, "at trial, defense counsel affirmatively assented to the playback of certain testimony without requesting the playback of additional testimony and without asking for the cautionary instruction that he now, on appeal, argues was constitutionally required").

The record in the present case demonstrates that defense counsel not only assented to the introduction of the video but also referenced the video in his cross-examination and further failed to object when the video was replayed at the jury's request during deliberations. As noted previously, at the time of the introduction of the video, defense counsel expressly stated: "[n]o objection, Your Honor." During his cross-examination of Ware, defense counsel referred to the video, asking "is it fair to say that [the defendant's] demeanor from your perspective . . . would you describe as appearing as you perceived him *in watching it again today* from your perspective was he at least up until the point where it was stopped was he chatty, nervous, defiant, how would you describe him in that interview?" (Emphasis added.) Moreover, during deliberations when the jury requested to rewatch a portion of the video and to review the testimony of the victim, defense counsel responded to the request by inquiring as to "logistics" and tried to recall his "own timeline" regarding how long the two reviews would take. He

no "correlation [was made] between the defendant's refusal to answer questions and her guilt"). In fact, the prosecutor made no comment on the defendant's invocation of his *Miranda* rights during closing argument, and did not otherwise highlight the challenged evidence to the jury. See *State* v. *Daugaard*, supra, 231 Conn. 213. This is not a case in which the prosecutor made a "strongly-worded argument suggesting a connection between the defendant's silence and his guilt." (Internal quotation marks omitted.) Cf. *State* v. *Hughes*, 45 Conn. App. 289, 292–93, 296, 696 A.2d 347 (1997) (error was not harmless where detective testified "no less than eight different times as to the defendant's request not to talk about the accusations," including that he understood the defendant's unwillingness to talk about it as "a form of guilt" and state's attorney, in closing argument, "equated the defendant's post-*Miranda* silence with guilt and consciousness of guilt" [internal quotation marks omitted]).

Moreover, the challenged evidence was not "linked to any exculpatory story advanced by the defense." *State* v. *Jackson*, supra, 150 Conn. App. 361. The evidence that the defendant claims violated *Doyle* was wholly unrelated to the defendant's exculpatory theories. See *State* v. *Camacho*, 92 Conn. App. 271, 284–85, 884 A.2d 1038 (2005) (concluding that any *Doyle* violation was harmless beyond a reasonable doubt, noting that jury may have found the defendant's alibi defense "weak" because "rebuttal witnesses could not give a consistent story," and stating that prosecutor's challenged remarks "were not used to attack the defendant's alibi"), cert. denied, 276 Conn. 935, 891 A.2d 1 (2006).

made no objection to the jury rewatching the video. We thus conclude that because the defendant has waived his claim with respect to the video, there is no existing constitutional violation, and thus the claim that the admission of the video into evidence violated *Doyle* fails to satisfy the third prong of *Golding*.

Although the defendant did not testify, he called two witnesses on his behalf, the victim's mother and his wife, to advance the following defenses: (1) someone other than the defendant had engaged in anal intercourse with the victim, (2) the victim lied about who had abused him because he did not want to admit that he was gay, and (3) the defendant was out of state for work at the time of the final instance of abuse. The jury reasonably may have found these defenses weak, given the inconsistent evidence presented in support of them.

The defendant generally sought to attack the credibility of the victim through the victim's mother, who opined that the victim was accusing the defendant of abuse because the victim did not want to admit that he was gay. The victim's mother also testified that she believed the victim had engaged in anal intercourse with a teenager, not with the defendant, based on Facebook messages she had seen between the victim and another teenager that indicated that the victim had engaged in anal intercourse for the first time with that teenager in August, 2013. The defendant points to this testimony as evidence "as to who could have committed this crime other than the defendant." This evidence was contradicted in two ways. First, the state presented medical evidence that the victim suffered physical injuries and psychological distress as a result of sexual abuse. Specifically, Dr. Livingston observed open sores in the area above the victim's anus. Dr. Livingston also testified that the victim demonstrated symptoms of psychological distress, including experiencing flashbacks of the abuse. On the basis of this evidence, the jury reasonably could have rejected the defense's suggestion that a first-time, consensual sexual encounter with another teenager would produce the victim's injuries. Second, the victim's mother's testimony was called into question by the six page written statement she gave to police. The

victim's mother testified that she had seen the Facebook messages "[a] week or two" after August 27, 2013. She gave her statement to police on November 4, 2013, approximately two months later. Despite having made several corrections to the police statement for accuracy, she failed to mention the Facebook messages she saw. She testified that she did not provide the information regarding the Facebook messages to the police at the time of her statement because there were "too many things going on at that time" and because she "was still believing in [the victim.]"[16]

Through the testimony of both the victim's mother and the defendant's wife, the defendant sought to establish that he was not in the state at the time of the final sexual assault in August, 2013. The defendant's wife testified that the defendant worked as a long haul truck driver and would be out of the area for periods of time. Specifically, she testified that the defendant was away working as a long haul truck driver in August, 2013, and that he was away from home at the time of their anniversary, in July, and her birthday, in August. She testified that he did not return from these particular work trips until "maybe the first week of September." The victim's mother testified that the defendant was in Florida on a job in August, 2013. This testimony was directly contradicted by other evidence. During the Hartford interview, which was conducted on September 10, 2013, the defendant told police officers that he had not worked in a couple of months. The defendant's wife's testimony was further contradicted in that she testified that they were not separated while the defendant told police officers that they were separated.

[16] In her statement, she noted that in April or May, 2013, when the victim first told her about the abuse but then denied it, she "left it at that but [she] still had [her] doubts because he said it too many times." She further stated that the victim "does fabricate things but this time it didn't seem so."

Moreover, apart from the challenged evidence related to the defendant's post-*Miranda* silence, the state established the guilt of the defendant beyond a reasonable doubt.[17] See *State* v. *Daugaard*, supra, 231 Conn. 213. The victim, sixteen years old at the time of trial, testified at length and in detail regarding the assaults and consistently identified the defendant as his abuser to police, to medical personnel, to department personnel, and during his testimony at trial. The victim was also able to provide locations where the abuse occurred, both during interviews with the police and during his testimony at trial. Specifically, he had made a drawing of the surroundings, including a nearby bowling alley, of the motel where the defendant had abused him, and the victim was able to identify the motel while driving around with Winiger.[18] The defendant told police

[17] The defendant claims that "[i]f the jury wanted to rehear the taped interview of this defendant by the police, including his exercise of his right to remain silent, it is proof that a *Doyle* violation was not insignificant, at least in the minds of the jury." We first note that the defendant incorrectly claims that "the only piece of evidence the jury wanted to hear was the taped interview . . . ." The record reveals that the jury also asked to review the testimony of the victim. The defendant concedes that he "did make some damaging admissions" during the Hartford interview and recognizes that he "admitted he was alone with [the victim] and to taking him to some of the places where [the victim] claims to have been sexually assaulted . . . ." Accordingly, we reject the defendant's claim that the jury's request to rewatch the video compels the conclusion that the jury found the challenged portion of the Hartford interview significant, particularly in light of the nonchallenged statements the defendant made during that interview and the relationship between those statements and the defenses presented during trial.

Moreover, defense counsel's failure to object, and affirmative representation that he had no objection, to the introduction of the video shows that defense counsel did not consider the video to be prejudicial. See *State* v. *Canty*, 223 Conn. 703, 712, 613 A.2d 1287 (1992) (noting, in harmless error analysis, that trial counsel's failure to object "indicate[d] that he did not consider" the challenged evidence "to have prejudiced the defendant").

[18] The defendant relies upon *Hill* v. *Turpin*, 135 F.3d 1411, 1415–16 (11th Cir. 1998) for the proposition that "repeated and deliberate" reference to a defendant's silence has a substantial influence on the jury's verdict. In *Hill*, the prosecutor, despite repeated warnings prior to trial that the state was precluded from introducing evidence regarding the defendant's request for

during the Hartford interview that he had taken the victim and the victim's mother to a birthday party at a hotel, which he said "might be past" a bowling alley. Both in her testimony and in her written statement, the victim's mother denied that the defendant had taken them to a party.

The state not only presented medical evidence that the victim had been sexually abused, but also presented evidence from which the jury reasonably could have determined the defendant was the abuser. The defendant concedes that the medical evidence "does support the claim that [the victim] was sodomized and subjected to terrible sexual abuse. It does not, however, support a claim that the defendant was the one who committed the acts." We disagree. Dr. Livingston testified that upon admission to the hospital in August, 2013, the victim, who was fourteen years old at the time, was diagnosed with a sexually transmitted disease. The state also presented evidence that the defendant told Winiger that he had tested positive for a sexually transmitted disease. The victim further testified that the defendant was the only male sexual partner he ever had.

In sum, we conclude that the admission of the challenged evidence concerning the defendant's invocation

counsel: (1) elicited testimony from the chief investigator regarding the defendant's exercise of his rights, (2) used the defendant's silence to impeach his testimony at trial by asking him "[d]id you ever try to explain all of this to anybody before today?" and (3) highlighted during closing argument the defendant's "failure to tell his exculpatory story to the police at the time of his arrest by contrasting [the defendant's] silence with the statements made by other scene witnesses." Id., 1414–15. Having concluded that the prosecutor violated *Doyle*, the United States Court of Appeals for the Eleventh Circuit further determined that the violation was not harmless, citing "the repeated and deliberate nature" of the violations, and "the significant weaknesses in the state's case." Id., 1416–17.

Hill is distinguishable in that the prosecutor in the present case neither used the defendant's silence to impeach his testimony nor referenced the defendant's silence in closing argument. Moreover, this is not a case, like *Hill*, where there were "significant weaknesses in the state's case" against the defendant.

of his *Miranda* rights was harmless beyond a reasonable doubt. Most importantly, the state never referenced the challenged evidence in closing argument, nor did it otherwise use the evidence in such a way as to suggest the defendant's guilt. Moreover, here, as in *State* v. *Daugaard*, supra, 231 Conn. 213, the references to the defendant's invocation of his constitutional rights were "marginal in the context of the entire trial." The references were unrelated to the defendant's defenses, which were inherently weak. Lastly, the state's case, apart from the challenged evidence, was strong. Accordingly, the defendant is unable to prevail under the fourth prong of *Golding*.

The judgments are affirmed.

In this opinion the other judges concurred.

STATE OF CONNECTICUT *v.* QUAN SOYINI (AC 40059)

DiPentima, C. J., and Elgo and Harper, Js.

Syllabus

Convicted of the crimes of murder as an accessory and conspiracy to commit murder, the defendant appealed, claiming, inter alia, that the evidence was insufficient to support his conviction and that the trial court's jury instructions violated his right to a fair trial. The defendant had asked his brother, K, to help him locate the victim, who previously had robbed the defendant at gunpoint. When the defendant saw the victim on a street, he called K and gave him a description of the victim. The victim had gone into the house of R and G and told them that some guys were trying to kill him, and then ran into a school parking lot behind their house, where he was shot to death by K. The police concluded from a video recording of the parking lot that the defendant had been wearing the same clothes as a person in the video recording who had walked through the parking lot shortly after the shooting. K later pleaded guilty in a separate proceeding to having murdered the victim. *Held*:

1. The evidence was sufficient to support the defendant's conviction of murder as an accessory and conspiracy to commit murder: there was sufficient evidence presented to show that the defendant had the intent to cause the death of the victim, an element necessary to both crimes, as

the state built a chain of inferences that established, beyond a reasonable doubt, that the defendant's conduct on the morning of the shooting was not passive acquiescence but rather active involvement, including his conduct in soliciting K's assistance and helping K locate and identify the victim, certain comments of K that implicated the defendant, and K's lack of motive or intent to kill the victim, independent of the defendant's interest in revenge, which demonstrated an intent that the defendant shared with K to cause the death of the victim; moreover, the state produced sufficient evidence from which the jury reasonably could have inferred that the defendant knowingly and wilfully assisted K in the acts that prepared for and facilitated the murder, and that the defendant had entered into an agreement with K to cause the death of the victim, as the evidence showed that the defendant had a motive to seek revenge against the victim, the defendant called K, requested his help and provided him with a description of the victim, the defendant and K had searched twice for the victim, who told R and G that some "guys" were trying to kill him, and the defendant appeared at the residence of R and G, and asked if someone had gone through the residence moments after the victim left the residence.

2. The defendant could not prevail on his unpreserved claim that the trial court violated his right to a fair trial when it failed to instruct the jury that it could not use K's previous guilty plea to find that the crime of murder had been proven beyond a reasonable doubt and when it stated to the jury that K was the principal offender in the murder: the jury could not have been misled thereby, as the court's instructions provided the jury with a clear understanding of the elements of the crimes charged, informed the jury that the state had to prove each element of the offense, including identification of the defendant, beyond a reasonable doubt, afforded proper guidance for the jury's determination of whether those elements were proved by the state, provided that the state had to prove that the defendant was the perpetrator of the crime and that the jury had to determine the intent of the defendant, and limited the jury's use of K's testimony regarding his conviction of murder to the determination of his credibility.
3. There was no merit to the defendant's unpreserved claim that the trial court committed plain error by giving the jury an unwarranted special credibility instruction on accomplice testimony, which was based on his assertion that K had no hope of obtaining favorable treatment from the state in exchange for his testimony because he already had pleaded guilty to and been sentenced for the murder of the victim; the defendant did not demonstrate that the accomplice instruction constituted an error that was so clear, obvious and indisputable as to warrant the extraordinary remedy of reversal, as required under plain error analysis, and even if it was assumed that such error existed, the accomplice instruction

did not constitute manifest injustice, as the defendant failed to demonstrate that the challenged instruction was of such monumental proportion that it threatened to erode the system of justice or that it resulted in harm so grievous that fundamental fairness required a new trial.

Argued September 25, 2017—officially released March 13, 2018

Procedural History

Substitute information charging the defendant with the crimes of murder as an accessory and conspiracy to commit murder, brought to the Superior Court in the judicial district of Hartford and tried to the jury before *Kwak, J.*; verdict and judgment of guilty, from which the defendant appealed. *Affirmed.*

Tejas Bhatt, assistant public defender, with whom, on the brief, was *Jennifer L. Bourn*, assistant public defender, for the appellant (defendant).

Leonard C. Boyle, deputy chief state's attorney, with whom, on the brief, were *Gail P. Hardy*, state's attorney, and *John F. Fahey*, senior assistant state's attorney, for the appellee (state).

Opinion

DiPENTIMA, C. J. The defendant, Quan Soyini, appeals from the judgment of conviction, rendered after a jury trial, of being an accessory to murder in violation of General Statutes §§ 53a-54a[1] and 53a-8[2] and conspiracy to commit murder in violation of General Statutes §§ 53a-54a and 53a-48.[3] On appeal, the defendant claims

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

[2] General Statutes § 53a-8 (a) provides: "A person, acting with the mental state required for commission of an offense, who solicits, requests, commands, importunes or intentionally aides 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."

[3] General Statutes § 53a-48 (a) provides: "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."

that (1) there was insufficient evidence to sustain his conviction of both crimes, (2) the court's improper jury instructions violated his right to a fair trial and (3) the court committed plain error by giving a special credibility instruction on accomplice testimony, which was unwarranted in this case. We disagree and, accordingly, affirm the judgment of conviction.

The jury reasonably could have found the following facts. In early July, 2013, the defendant and his brothers, Kunta Soyini (Kunta) and Quincy Soyini (Quincy), attended the funeral of their father. At the funeral, the defendant revealed to Quincy that he had been robbed at gunpoint while selling marijuana to the victim, Chimer Gordon.[4] On the day of the robbery, the defendant had asked Kunta to help him find the victim, but the two brothers were unable to locate him.

Subsequently, on July 10, 2013, at approximately 10 a.m., the defendant saw the victim and called Kunta. Kunta drove to the defendant's location on Vine Street in Hartford. At that time, the defendant was driving a black Audi. Both Kunta and the defendant searched for the victim.

At some point, the victim became fearful and ran into the house of Robert Davis and Gussie Mae Davis, which was located on Greenfield Street. After apologizing for the intrusion, the victim stated to the Davises that "*they* was trying to kill" him and that if he called the police "*they're* gonna kill my family." (Emphasis added.) Gussie Mae Davis called 911, reporting that the victim, after entering her home, had stated that "*guys* was after him to kill him." (Emphasis added.) The victim, after exiting the residence, ran into the parking lot of the Thirman Milner School (school), which is located behind the

[4] Specifically, Quincy testified that the defendant had told him that the victim, accompanied by another individual, had "put a gun in front of [the defendant's] face, and he took him for a little weed and the money."

Davises' house. Moments later, the defendant drove up to the house and asked Robert Davis if "a guy" had run through the house.

At this point, Kunta drove down Magnolia Street and saw the victim, who was wearing clothing that matched the description he had received from the defendant.[5] Kunta had no prior or pending disagreements with the victim and did not know him at all.[6] Kunta exited his motor vehicle, walked through the school parking lot and approached the victim, who was crouched between parked cars.[7] Kunta walked through the parking lot in the direction of the victim while talking on a cell phone and with his left hand in his pocket. Kunta then faced the victim and, when he was at a distance greater than one car length, removed a firearm from his left pants pocket. The victim was tying his shoe as Kunta aimed the firearm at him. The victim then turned to his left, got up and ran. While pursuing him, Kunta shot at the

[5] Specifically, Kunta testified: "I was driving down Magnolia Street, and I looked to my right. And I seen somebody walking through the [school] parking lot that matched the description that [the defendant] gave me."

[6] The following colloquy occurred during Kunta's testimony on direct examination by the prosecutor:

"Q. And did you know that the—the kid [that the defendant] was looking for, did you know who that kid was?

"A. No.

"Q. Had you had any beefs with that kid?

"A. No.

"Q. All right. And I'm gonna show you what's been marked state's exhibit 46. See if you recognize that kid. Do you recognize him?

"A. No.

"Q. Okay. To this day, do you know who the kid was that you shot?

"A. No."

Subsequently on redirect examination, Kunta agreed with the prosecutor that he did not know the victim and did not have "any beefs" with him. He also admitted that he loved the defendant and would do anything for him. Finally, Kunta stated on cross-examination that he went to the area only because the defendant had called him "for my help."

[7] According to the time-stamp from the video recording of the school parking lot, the victim sat between the two cars at 10:18:47 a.m.

victim from close range, but missed. Kunta continued to chase the victim as he ran through the parking lot.[8]

A few moments later, the defendant, wearing a black T-shirt, black and red shorts, black ankle length socks and flip-flops, walked through the school parking lot in the opposite direction from Kunta.[9] As Roderick Maxwell, a special police officer employed by the Hartford Board of Education, investigated the noises that he had heard, he encountered the defendant. The defendant told Maxwell, "don't worry about a thing."[10]

The victim unsuccessfully attempted to scale a gate. Kunta then shot the victim in the chest, got in his car, and drove away.[11] Maxwell heard Kunta emit a "ghastly, nightmarish laugh" as he left the area.

[8] The events depicted on the video recording of the school parking lot contradict parts of Kunta's testimony regarding his interactions with the victim at this time in the parking lot. Specifically, Kunta testified: "I walked through the parking lot. And as I got up by the cars, the parked cars, I seen somebody sitting down between two parked cars. And I approached the guy, and I asked—asked him what his name was. And he just looked at me. So, I reached in my pocket and got—and grabbed my phone to call [the defendant] and see if this was the guy they were looking for or whatever. And the guy walked toward me. Just stay right there.

"And then he walked toward me again, and that's when I pulled out—pulled my gun out. And that time he, like, half turned body away from me. And I thought he was making a move, so I started shooting at him and chasing him."

It is axiomatic that "[a] jury may properly decide, however, what—all, none or some—of a witness' testimony to accept or reject." (Internal quotation marks omitted.) *State* v. *Steele*, 176 Conn. App. 1, 12, 169 A.3d 797, cert. denied, 327 Conn. 962, 172 A.3d 1261 (2017); *State* v. *Young*, 174 Conn. App. 760, 767, 166 A.3d 704, cert. denied, 327 Conn. 976, 174 A.3d 195 (2017).

[9] According to the time-stamp from the video recording of the school parking lot, the defendant appeared at 10:19:44 a.m.

[10] Maxwell further described the defendant's attitude in the school parking lot as "like a day at beach" and that there was "[n]o need for concern."

[11] Kunta testified that he shot at the victim in self-defense, both in the school parking lot and when the victim unsuccessfully attempted to climb over a gate. We have detailed the events of the former previously in this opinion. See footnote 8 of this opinion. With respect to the latter, Kunta stated: "He tried to jump a gate, and I just stood there and watched him. And he couldn't get over the gate. So, when he fell back down, he turned

Jay Montrose, a Hartford police officer, responded to the 911 call. Montrose spoke with the Davises and then went outside, where he learned from Maxwell that the victim was lying on the ground near a fence. After driving his police vehicle into the school's parking lot, Montrose observed that the victim had suffered a gunshot wound and had lost a fair amount of blood. Montrose commenced resuscitation efforts on the victim. Medical personnel arrived shortly thereafter and transported the victim to a hospital, but he succumbed to his injuries and died.[12]

Reginald Early, a sergeant in the Hartford Police Department, was assigned to investigate this homicide. He reviewed a video recording of the school parking lot. Early also learned that a black Audi had been circling the neighborhood prior to the shooting. The defendant was inside the car when investigating officers located the black Audi approximately one block from the school. The officers arrested the defendant on an unrelated charge of possession of marijuana with intent to sell. Early concluded that the defendant was wearing the same clothes as the person on the video recording who had walked through the school parking lot shortly after the initial shooting.

Joseph Fargnoli, a Hartford police detective, interviewed the defendant following his arrest. He showed the recording from the school parking lot to the defendant, who confirmed that he and Kunta were the men

around and faced me, and he—he picked up, like, this—like, this big log or something. I told the dude, let's just chill. Let's stay right there. And then he started screaming real loud and ran at me. And that's when I shot him in the chest."

As we have noted, the jury is free to accept or to reject all, some or none of a witness' testimony. *State* v. *Steele*, 176 Conn. App. 1, 12, 169 A.3d 797, cert. denied, 327 Conn. 962, 172 A.3d 1261 (2017); *State* v. *Young*, 174 Conn. App. 760, 767, 166 A.3d 704, cert. denied, 327 Conn. 976, 174 A.3d 195 (2017).

[12] Susan Williams, an associate medical examiner for the state, testified that the victim died as a result of a gunshot wound to the chest.

in the recording. The defendant denied knowing the victim or how he had died. The defendant did, however, admit that he had spoken to an "old guy" on Greenfield Street that morning, asking if a "kid" had run through the house.

Fargnoli, who had examined the defendant's cell phone records,[13] determined that the defendant had called Kunta first on the day of the shooting. The defendant, however, stated during his interview that Kunta had called him first, asking the defendant to "come over . . . ."[14]

On the morning of the shooting, Kunta had driven his girlfriend, Shumia Brown, to work in Bloomfield at 4 a.m. Kunta was supposed to pick Brown up at 11 a.m., but was late. When he finally arrived, Brown voiced her displeasure with his tardiness, particularly because Kunta was using her motor vehicle. He explained that he "got caught up in some mess with [the defendant]" but did not elaborate.

Later that day, Kunta told Brown that the defendant had called him and instructed that they meet on Vine Street because the defendant "ran into who had robbed him before." After traveling home, Kunta and Brown watched the afternoon news, and there was a story about the shooting at the school. Brown observed that

[13] Fargnoli testified that there were five telephone calls between the defendant and Kunta on July 10, 2013. The first call was from the defendant to Kunta at 10:13 a.m. and lasted approximately three and one-half minutes. The second call was from Kunta to the defendant at 10:17 a.m., and lasted just over two minutes. The third call, made at 10:20 a.m., was from the defendant to Kunta and had no duration, while the fourth call, which also occurred at 10:20 a.m., was from Kunta to the defendant for six seconds. The fifth and final call, which took fourteen seconds, was from the defendant to Kunta at 10:21 a.m. Fargnoli also indicated that the 911 call in this case occurred at 10:17 a.m.

[14] The jury reasonably could have concluded that the defendant lied to the police with respect to his statements that Kunta had telephoned him first and that he did not know the victim.

Kunta started acting "funny" and not "like himself." Brown asked if Kunta and the defendant had anything to do with the shooting, and he hesitated in his response. At that point, Brown believed that Kunta had been involved in the shooting. Kunta then admitted to his involvement in the shooting. Additionally, at a later date, Kunta stated, during a phone conversation with Brown, that he had gotten "involved in some drama behind [the defendant]."

Following the defendant's arrest, Kunta fled to Virginia. He eventually was taken into custody by United States marshals and returned to Connecticut. Following his return, Kunta pleaded guilty to murdering the victim. In a statement to the police, Kunta noted that on the day of the shooting, the defendant had found the victim "walking around" and called to request that Kunta "help him."

In an information dated May 27, 2015, the state charged the defendant with being an accessory to murder and conspiracy to commit murder. The defendant pleaded not guilty, and his trial spanned several days in July, 2015. The jury found him guilty on both counts. The defendant received a total effective sentence of seventy years incarceration, with twenty-six years being the mandatory minimum. This appeal followed. Additional facts will be set forth as necessary.

I

The defendant first claims that there was insufficient evidence to sustain his conviction of murder as an accessory and conspiracy to commit murder.[15] Specifically, he argues that the state failed to present sufficient evidence that he had intended to kill the victim, an

[15] "We begin with this issue because if the defendant prevails on the sufficiency claim, [he] is entitled to a directed judgment of acquittal rather than to a new trial." *State* v. *Moore*, 100 Conn. App. 122, 126 n.2, 917 A.2d 564 (2007).

element common to both crimes. Additionally, the defendant contends there was insufficient evidence that he aided Kunta in the shooting of the victim or that he formed an agreement with Kunta to cause the death of the victim. The state counters that there was "ample" evidence to support the defendant's conviction of murder as an accessory and conspiracy to commit murder. We agree with the state that there was sufficient evidence to support the defendant's conviction of both crimes.

Initially, we set forth our well established standard of review. "In reviewing the sufficiency of the evidence to support a criminal conviction 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 [finder of fact] reasonably could have concluded that the cumulative force of the evidence established guilt beyond a reasonable doubt. . . .

"We note that the jury must find every element proven beyond a reasonable doubt in order to find the defendant guilty of the charged offense, [but] each of the basic and inferred facts underlying those conclusions need not be proved beyond a reasonable doubt. . . . If it is reasonable and logical for the jury to conclude that a basic fact or an inferred fact is true, the jury is permitted to consider the fact proven and may consider it in combination with other proven facts in determining whether the cumulative effect of all the evidence proves the defendant guilty of all the elements of the crime charged beyond a reasonable doubt. . . .

"Moreover, it does not diminish the probative force of the evidence that it consists, in whole or in part, of evidence that is circumstantial rather than direct. . . .

It is not one fact, but the cumulative impact of a multitude of facts which establishes guilt in a case involving substantial circumstantial evidence. . . . In evaluating evidence, the [finder] of fact is not required to accept as dispositive those inferences that are consistent with the defendant's innocence. . . . The [finder of fact] may draw whatever inferences from the evidence or facts established by the evidence it deems to be reasonable and logical. . . .

"Finally, [a]s we have often noted, proof beyond a reasonable doubt does not mean proof beyond all possible doubt . . . nor does proof beyond a reasonable doubt require acceptance of every hypothesis of innocence posed by the defendant that, had it been found credible by the [finder of fact], would have resulted in an acquittal. . . . 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 [finder of fact's] verdict of guilty." (Internal quotation marks omitted.) *State* v. *Crespo*, 317 Conn. 1, 16–17, 115 A.3d 447 (2015); see also *State* v. *Otto*, 305 Conn. 51, 65–66, 43 A.3d 629 (2012). Mindful of this standard of review, we consider the defendant's arguments in turn.

A

The defendant first argues that the state failed to prove that he had the intent to cause the death of the victim, an element necessary for both crimes. See generally *State* v. *Patterson*, 213 Conn. 708, 712, 570 A.2d 174 (1990) (sufficient evidence at probable cause hearing of defendant's intent to cause death was prerequisite to continuing prosecution of defendant on accessory to murder and conspiracy to commit murder counts). We are not persuaded.

Our Supreme Court has recognized that "[i]n order to be convicted under our murder statute, the defendant must possess the specific intent to cause the death of the victim. . . . To act intentionally, the defendant must have had the conscious objective to cause the death of the victim. . . . Intent is generally proven by circumstantial evidence because direct evidence of the accused's state of mind is rarely available. . . . Therefore, intent is often inferred from conduct . . . and from the cumulative effect of the circumstantial evidence and the rational inferences drawn therefrom. Intent is a question of fact, the determination of which should stand unless the conclusion drawn by the trier is an unreasonable one." (Internal quotation marks omitted.) *State* v. *Bennett*, 307 Conn. 758, 765–66, 59 A.3d 221 (2013). A defendant's state of mind often is the most significant and most elusive element of the charged crimes. *State* v. *Bonilla*, 317 Conn. 758, 766, 120 A.3d 481 (2015). "[I]ntent may be proven by conduct before, during and after [a] shooting. Such conduct yields facts and inferences that demonstrate a pattern of behavior and attitude toward the victim by the defendant that is probative of the defendant's mental state." (Internal quotation marks omitted.) Id.; see also *State* v. *Carter*, 317 Conn. 845, 856–59, 120 A.3d 1229 (2015).

The defendant relies on the following in support of his claim: "[He] did not lead the victim to the shooter; and he did not distract the victim or act as a lookout. . . . [He] was not present when [the victim] was killed; he did not assist Kunta in fleeing the scene, nor did he depart with Kunta; and he did not commit another felony while in [the victim's] presence. . . . [T]he defendant here did not assist Kunta in fleeing the scene, and did not attempt to avoid apprehension. Finally, the existence of phone records to contradict some of this defendant's statements . . . should not be sufficient

to sustain these convictions." We are not persuaded by these arguments.

1

As a preliminary matter, we set forth the elements of and relevant legal principles applicable to the crimes of murder as an accessory and conspiracy to commit murder. First, we note that "[t]his state . . . long ago adopted the rule that there is no practical significance in being labeled an *accessory* or a *principal* for the purpose of determining criminal responsibility. . . . Under the modern approach, a person is legally accountable for the conduct of another when he is an accomplice of the other person in the commission of the crime. . . . [T]here is no such crime as being an accessory . . . . The accessory statute merely provides alternate means by which a substantive crime may be committed." (Emphasis in original; internal quotation marks omitted.) *State* v. *Smith*, 86 Conn. App. 259, 266, 860 A.2d 801 (2004); *State* v. *Wright*, 77 Conn. App. 80, 92, 822 A.2d 940, cert. denied, 266 Conn. 913, 833 A.2d 466 (2003); see also *State* v. *Smalls*, 136 Conn. App. 197, 203, 44 A.3d 866 (2012) (under Connecticut law both principals and accessories treated as principals), appeal dismissed, 312 Conn. 148, 91 A.3d 460 (2014) (certification improvidently granted).

Our Supreme Court has explained that "[t]o be guilty as an accessory one must share the criminal intent and community of unlawful purpose with the perpetrator of the crime . . . . In accordance with our murder statute, a conviction of murder as an accessory thus requires, inter alia, that the accessory shared the perpetrator's intent to cause the death of another person . . . . General Statutes § 53a-54a (a). A person acts intentionally with respect to a result . . . described by a statute defining an offense when his conscious

objective is to cause such result . . . . General Statutes § 53a-3 (11).'' (Citation omitted; emphasis omitted; internal quotation marks omitted.) *State* v. *Bonilla*, supra, 317 Conn. 766; *State* v. *Robertson*, 254 Conn. 739, 783–84, 760 A.2d 82 (2000); see also *State* v. *Foster*, 202 Conn. 520, 525–26, 522 A.2d 277 (1987) (conviction under § 53a-8 requires proof of dual intent, i.e. that accessory has intent to aid principal and that in so aiding he intends to commit offense with which he is charged).

Similarly, a conviction of conspiracy to commit murder requires that the state prove that ''there was an agreement between two or more persons to cause the death of another person and that the agreement was followed by an overt act in furtherance of the conspiracy by any one of the conspirators. . . . In addition, the state also must show that the conspirators intended to cause the death of another person.'' (Internal quotation marks omitted.) *State* v. *Mourning*, 104 Conn. App. 262, 267, 934 A.2d 263, cert. denied, 285 Conn. 903, 938 A.2d 594 (2007); *State* v. *Sanchez*, 84 Conn. App. 583, 588, 854 A.2d 778, cert. denied, 271 Conn. 929, 859 A.2d 585 (2004); see also *State* v. *Crump*, 43 Conn. App. 252, 259, 683 A.2d 402 (''[t]o prove the offense of conspiracy to commit murder, the state must prove two distinct elements of intent: that the conspirators intended to agree; and that they intended to cause the death of another person'' [internal quotation marks omitted]), cert. denied, 239 Conn. 941, 684 A.2d 712 (1996); *State* v. *Romero*, 42 Conn. App. 555, 558, 681 A.2d 354 (same), cert. denied, 239 Conn. 935, 684 A.2d 710 (1996).

2

The defendant focuses on two recent decisions from our Supreme Court in support of his insufficiency claim: *State* v. *Bennett*, supra, 307 Conn. 761, and *State* v. *Gonzalez*, 311 Conn. 408, 87 A.3d 1101 (2014).

In *State* v. *Bennett*, supra, 307 Conn. 774, our Supreme Court reversed the defendant's conviction of murder as an accessory on the ground that the state had failed to prove that he intended to kill the victim.[16] It specifically noted that in all accessorial liability cases, the defendant "had engaged in some act to prepare for, aid, encourage, facilitate or consummate the murder; it was from such acts that intent reasonably was inferred." Id., 768. Specifically, the defendant either inflicted or attempted to inflict harm on the victim, or otherwise participated in the murder by identifying the victim, taking the principal to the victim, distracting the victim and acting as a lookout to prevent interruption of the murder or assisting with the escape of the principal. Id., 769. The court specifically noted that "[o]ftentimes, evidence of a motive to kill had been established." Id. Additionally, the court in *Bennett* noted that the evidence revealed little about the defendant's actions at the most critical points in time, that is, prior to the defendant's arrival at the victim's apartment and the period of time after his arrival and prior to the shooting of the victim.[17] Id., 766.

At the same time, our Supreme Court recognized that "[o]ne who is present when a crime is committed but neither assists in its commission nor shares in the criminal intent of its perpetrator cannot be convicted as an accessory. . . . Mere presence as an inactive companion, passive acquiescence, or the doing of innocent acts which may in fact aid the one who commits the crime must be distinguished from the criminal intent and community of unlawful purpose shared by one who knowingly and wilfully assists the perpetrator of the offense

[16] In *State* v. *Bennett*, supra, 307 Conn. 761, the defendant and the principal, in possession of loaded handguns, drove to the second floor apartment of the victim and his girlfriend. The principal knocked on the front door, engaged the victim in a brief conversation, and then shot him in the face. Id.

[17] In contrast to the facts of the present case, the defendant in *Bennett* had met the victim only hours before the fatal shooting. *State* v. *Bennett*, supra, 307 Conn. 761.

in the acts which prepare for, facilitate, or consummate it." (Citation omitted; internal quotation marks omitted.) Id., 770.

In *State* v. *Gonzalez*, supra, 311 Conn. 408, also cited by the defendant, our Supreme Court concluded that there was no evidence that the defendant had commanded, directed, solicited, requested, or importuned the principal to shoot the victim.[18] Id., 421. It further commented that while "the defendant was by no means an innocent bystander in the chain of events that led to the victim's death, the evidence nevertheless is insufficient to prove his guilt beyond a reasonable doubt under an accessory theory of criminal liability." Id., 422.[19] We find that the defendant's reliance on *Bennett* and *Gonzalez* is misplaced because, unlike in those cases, there is ample evidence here on which the jury could rely to reasonably infer his intent to kill the victim. Moreover, the evidence also supports a finding that far from being a passive actor, the defendant solicited Kunta's participation in the killing of the victim.

Before applying the reasoning of *State* v. *Gonzalez*, supra, 311 Conn. 408, and *State* v. *Bennett*, supra, 307 Conn. 758, to the present case, we must consider *State* v. *Bonilla*, supra, 317 Conn. 758, a case cited by the state. In that case, the defendant and his two brothers, Noel Bermudez and Victor Santiago, agreed to rob the victim, an individual against whom Santiago harbored

[18] In *State* v. *Gonzalez*, supra, 311 Conn. 411–12, the victim, after observing a drug sale in his mother's apartment building on Christmas night, exchanged words with the defendant and the principal. The defendant pointed a handgun at the victim, and a struggle ensued. Id., 412. The principal picked up the handgun, which had fallen to the floor, and shot the victim twice, causing his death. Id., 412–13.

[19] We further note that our Supreme Court focused on the insufficiency of the evidence with respect to whether the defendant had "acted as [the principal's] accessory" rather than whether he had shared the intent to kill the victim. *State* v. *Gonzalez*, supra, 311 Conn. 421.

a long-standing grudge. Id., 760. This resentment originated from a prior incident when the victim had shot Santiago, scarring his neck. Id.

The brothers drove to the victim's street and, working in concert, robbed and fatally shot him. Id. Following the shooting, the brothers returned to Santiago's home, where the defendant threatened to Santiago's wife that he would kill her and her mother if she discussed the shooting. Id., 761. The brothers destroyed the checks they had stolen, burned their clothes, and cleaned the getaway car to eliminate any incriminating evidence. Id.

The facts of *State* v. *Bonilla*, supra, 317 Conn. 758, are sufficiently similar to those of the present case to be persuasive. In *Bonilla*, our Supreme Court concluded that one brother's "long-standing grudge"; id., 760; against the victim, in combination with the evidence that the brothers acted in concert to "settle an old score" was sufficient for the jury to reasonably infer the intent to kill. Id., 768; cf. *State* v. *Bennett*, supra, 307 Conn. 766, 773 (defendant had no preexisting connection to victim and had no motive to kill victim independent of burglary).

As in *State* v. *Bonilla*, supra, 317 Conn. 758, the record here is replete with evidence from which the jury could reasonably infer that the defendant had the intent to kill the victim. He solicited Kunta's assistance in the shooting, and helped Kunta to locate and to identify the victim as manifested in the defendant's exchange with Robert Davis, the ongoing cell phone communications moments before and during the shooting in the school parking lot, the defendant's comments to Maxwell, Kunta's comments to Brown implicating the defendant, and Kunta's lack of motive or intent to kill the victim independent of the defendant's interest in revenge.

We iterate that intent is often inferred from a defendant's conduct and the events leading to and immediately following a victim's death, from the cumulative effect of circumstantial evidence and from the reasonable inferences drawn therefrom. *State* v. *Otto*, supra, 305 Conn. 66–67. Moreover, the "intent to kill may be inferred from evidence that the defendant had a motive to kill." (Internal quotation marks omitted.) Id., 67; see also *State* v. *Bonilla*, supra, 317 Conn. 768; *State* v. *Ames*, 171 Conn. App. 486, 507–508, 157 A.3d 660, cert. denied, 327 Conn. 908, 170 A.3d 679 (2017); *State* v. *Moye*, 119 Conn. App. 143, 149, 986 A.2d 1134, cert. denied, 297 Conn. 907, 995 A.2d 638 (2010); *State* v. *Aviles*, 107 Conn. App. 209, 217, 944 A.2d 994, cert. denied, 287 Conn. 922, 951 A.2d 570 (2008).

We conclude that the state built a chain of inferences establishing, beyond a reasonable doubt, that the defendant's conduct on the morning of July 10, 2013, was not passive acquiescence but rather active involvement, demonstrating a shared intent to cause the death of the victim. See, e.g., *State* v. *Bonilla*, supra, 317 Conn. 768–69 (defendant's brother had long-standing hatred of victim and it was fair inference that brothers united in that hatred and sought revenge against victim; banding of brothers afforded strength in numbers to settle old score; and defendant acted as lookout, an active participant in murder, all of which amounted to evidence of intent to kill); *State* v. *Grant*, 149 Conn. 41, 49, 87 A.3d 1150 (defendant lured victim into car, which constituted evidence of intent to aid principal in murder), cert. denied, 312 Conn. 907, 93 A.3d 158 (2014); *State* v. *Ashe*, 74 Conn. App. 511, 518–20, 812 A.2d 194 (evidence that defendant and fellow gang members engaged in concert of action provided sufficient basis for accessorial liability), cert. denied, 262 Conn. 949, 817 A.2d 108 (2003); see generally *In re David M.*, 29 Conn. App. 499, 504–505, 615 A.2d 1082 (1992) (evidence

was clear that respondent was neither passively acquiescent nor acting in innocent fashion where he operated car to prevent victim from escaping and to assist shooter). Accordingly, we conclude that the evidence was sufficient for the jury to find that the defendant intended to kill the victim, a necessary element of murder as an accessory and conspiracy to commit murder.

B

The defendant next argues that there was insufficient evidence to support his conviction of murder as an accessory because the "record contains no evidence of words or other conduct that amounted to the defendant commanding, directing, soliciting, requesting, or importuning [Kunta] to shoot the victim." (Internal quotation marks omitted.) We disagree.

"To be guilty as an accessory one must share the criminal intent and community of unlawful purpose with the perpetrator of the crime *and one must knowingly and wilfully assist the perpetrator in the acts which prepare for, facilitate or consummate it*." (Emphasis added; internal quotation marks omitted.) *State* v. *Sargeant*, 288 Conn. 673, 680, 954 A.2d 839 (2008); see also *State* v. *Gonzalez*, supra, 311 Conn. 424; *State* v. *Martinez*, 278 Conn. 598, 615, 900 A.2d 485 (2006); see also *State* v. *Kerr*, 107 Conn. App. 413, 421–22, 945 A.2d 1004 (mere knowledge that crime is going to be committed is insufficient to establish liability as accessory if defendant does not encourage or intentionally aid in commission of crime), cert. denied, 287 Conn. 914, 950 A.2d 1290 (2008).

Having reviewed the evidence in the record, we conclude that the state produced sufficient evidence from which the jury reasonably could infer that the defendant knowingly and wilfully assisted Kunta in the acts which prepared for and facilitated the crime of murder. As we previously stated in part I A 2 of this opinion, the

jury reasonably could infer that the defendant had the intent to kill the victim from the following facts: the defendant had a motive to seek revenge against the victim; the defendant and Kunta twice actively searched for the victim; upon locating the victim, the defendant called Kunta and requested his help; the victim told the Davises that more than one person was trying to kill him; the defendant appeared at the Davises' residence moments after the victim left and asked if someone had gone through the residence; Kunta, who had no knowledge of or history with the victim, identified the victim from a description provided by the defendant; the defendant's comments to Maxwell that attempted to hide the events from a potential witness or to facilitate Kunta's escape from the scene by delaying or preventing a call to the police; Kunta's comments to Brown after the shooting and Kunta's statement to police following his return to Connecticut. These same facts from which the defendant's intent to kill can be inferred also support the jury's finding that the defendant knowingly assisted Kunta with the killing of the victim. Therefore, this claim of evidentiary insufficiency must fail.

C

The defendant next argues that there was insufficient evidence to support his conviction of conspiracy to commit murder because the state failed to show that an agreement existed between Kunta and the defendant to cause the death of the victim. We disagree.

"To establish the crime of conspiracy [to commit murder, the state must show] that *an agreement was made between two or more persons to engage in conduct constituting* [*the crime of murder*] and that the agreement was followed by an overt act in furtherance of the conspiracy by any one of the conspirators. . . . While the state must prove an agreement [to commit murder], the existence of a formal agreement between

the conspirators need not be proved because [i]t is only in rare instances that conspiracy may be established by proof of an express agreement to unite to accomplish an unlawful purpose. . . . [T]he requisite agreement or confederation may be inferred from proof of the separate acts of the individuals accused as coconspirators and from the circumstances surrounding the commission of these acts. . . . Further, [c]onspiracy can seldom be proved by direct evidence. It may be inferred from the activities of the accused persons." (Citations omitted; emphasis added; internal quotation marks omitted.) *State* v. *King*, 116 Conn. App. 372, 378–79, 976 A.2d 765, cert. denied, 294 Conn. 912, 983 A.2d 274 (2009); *State* v. *Mourning*, supra, 104 Conn. App. 267–68.

The defendant argues that there is "next to no evidence to support a finding of a knowing agreement between the defendant and Kunta to engage in a forbidden act. The only agreement the jury could reasonably infer from the evidence presented was an agreement to meet in the area of Vine Street. That is not an illegal act." We disagree.

The facts we have set forth in more detail previously in this opinion constitute evidence from which the jury reasonably could infer that an agreement existed, including the defendant's motive; his communications with Kunta; their searches for the victim; the defendant's exchanges with Davis and Maxwell, and his statements to the police; Kunta's statements to Brown and to the police; Kunta's own lack of motive and knowledge of the victim; and the victim's statements to the Davises. We conclude that the foregoing evidence was sufficient to establish that the defendant and Kunta had entered into an agreement to cause the death of the victim. Such an agreement often is inferred from the separate acts and the activities of the accused persons. *State* v. *Grant*, supra, 149 Conn. App. 46-47; see also *State* v.

Bell, 68 Conn. App. 660, 669, 792 A.2d 891 ("[i]n a conspiracy prosecution, when determining both a defendant's specific intent to agree and his specific intent that the criminal acts be performed, the jury may rely on reasonable inferences from facts in the evidence and may develop a chain of inferences, each link of which may depend for its validity on the validity of the prior link in the chain" [internal quotation marks omitted]), cert. denied, 260 Conn. 921, 797 A.2d 518 (2002). Accordingly, we conclude that the defendant's claim of insufficient evidence with respect to his conviction of conspiracy to commit murder is without merit.

II

The defendant next claims that the court's improper jury instructions violated his right to a fair trial. Specifically, the defendant argues that the court failed to inform the jury that it was not permitted to rely on Kunta's testimony that he had pleaded guilty to murdering the victim to prove that a murder occurred. The defendant further contends that the court's statement that "[i]n this case, the murder was committed by another individual, Kunta Soyini, who was the principal offender in the murder," amounted to a directed verdict, or, in the alternative, a dilution of the state's burden to prove that a murder in fact had occurred. The defendant concedes that this claim was unpreserved, but requests review pursuant to *State* v. *Golding*, 213 Conn. 233, 239–40, 567 A.2d 823 (1989), as modified by *In re Yasiel R.*, 317 Conn. 773, 781, 120 A.3d 1188 (2015).[20] We disagree with the defendant's claim.

[20] The defendant also requested that if we were to conclude that his claim is not reviewable pursuant to *State* v. *Golding*, supra, 213 Conn. 239–40, then the plain error doctrine requires a reversal of his conviction. See Practice Book § 60-5. Finally, he contends that "if this court finds that the claim was waived and that it does not satisfy the requirements of the plain error doctrine, it should nevertheless exercise its supervisory authority to remand for a new trial and to instruct trial courts that the testimony of a convicted coconspirator or accomplice should be accompanied by an appropriate limiting instruction." See *State* v. *Elson*, 311 Conn. 726, 764–66,

The following additional facts are necessary for our discussion. During the state's case, the prosecutor called Kunta as a witness. He testified that he had shot and killed the victim on July 10, 2013. He also admitted that he had pleaded guilty to the charge of murder as it related to that shooting and currently was serving a prison sentence. On cross-examination, Kunta stated that he did not go to the school parking lot with the intent to kill anyone, and that the defendant did not ask him to kill anyone, did not ask for his help to kill anyone and did not encourage him to kill anyone. Kunta also noted that his decision to kill the victim arose when he panicked after the victim "made a move . . . ."

During its instructions to the jury, the court addressed the issue of accomplice testimony. Additionally, it informed the jury that Kunta's conviction of murder was "only admissible on the question of the credibility of the witness, that is, the weight that you will give the witness' testimony. The witness' criminal record bears only on his—on this witness' credibility."

The court then discussed the state's burden to prove each element of the crimes as well as the identity of the defendant as the perpetrator of the crimes. With respect to the crime of murder, the court instructed that the state was required to prove that the defendant had intended to cause the death of the victim and, in accordance with that intent, had caused the death of the victim. The court iterated these elements when it discussed the crime of accessory to murder. It also stated that the murder was committed by someone besides the defendant, specifically, Kunta, the principal in this case. The court similarly instructed the jury with respect to the charge of conspiracy to commit murder.

91 A.3d 862 (2014). Because we have considered the claim under *Golding*, we need not employ these extraordinary tools for review.

As noted previously, the defendant did not preserve this challenge to the court's instructions. He requests review, inter alia, pursuant to the *Golding* doctrine.[21] "It is well established that [t]his court is not bound to review claims of error in jury instructions if the party raising the claim neither submitted a written request to charge nor excepted to the charge given by the trial court. . . . Under *Golding*, a defendant may prevail on an unpreserved claim only if the following conditions are met: (1) the record is adequate to review the alleged claim of error; (2) the claim is of constitutional magnitude alleging the violation of a fundamental right; (3) the alleged constitutional violation . . . exists and . . . deprived the defendant of a fair trial; and (4) if subject to harmless error analysis, the state has failed to demonstrate harmlessness of the alleged constitutional

[21] The state argues that the defendant waived this claim and, therefore, it is not reviewable under the *Golding* doctrine. "It is well established in Connecticut that unpreserved claims of improper jury instructions are reviewable under *Golding* unless they have been induced or implicitly waived. *State* v. *Kitchens*, [299 Conn. 447, 468, 10 A.3d 942 (2011)]. . . . [W]hen the trial court provides counsel with a copy of the proposed jury instructions, allows a meaningful opportunity for their review, solicits comments from counsel regarding changes or modifications and counsel affirmatively accepts the instructions proposed or given, the defendant may be deemed to have knowledge of any potential flaws therein and to have waived implicitly the constitutional right to challenge the instructions on direct appeal." (Citations omitted; internal quotation marks omitted.) *State* v. *Herring*, 151 Conn. App. 154, 169–70, 94 A.3d 688 (2014), aff'd, 323 Conn. 526, 147 A.3d 653 (2016).

In the present case, the record reveals that the court did not provide the parties with a draft of the complete jury instructions until the morning of July 6, 2015. At that point, the parties then reviewed the instructions page by page with the court. The defendant argues, therefore, that the timing in this case prevented counsel from engaging in a "meaningful review" of the court's instructions. We have recognized that a meaningful review requires the opportunity to review the proposed instructions overnight. *State* v. *Leach*, 165 Conn. 28, 33, 138 A.3d 445, cert. denied, 323 Conn. 948, 169 A.3d 792 (2016). We conclude, therefore, that the defendant was not afforded a meaningful opportunity to review the proposed instructions in this case and, thus, did not implicitly waive the right to challenge them pursuant to *Kitchens*.

violation beyond a reasonable doubt." (Citations omitted; internal quotation marks omitted.) *State* v. *Frasier*, 169 Conn. App. 500, 505–506, 150 A.3d 1176 (2016), cert. denied, 324 Conn. 912, 153 A.3d 653 (2017). We conclude that the defendant's claim fails under the third prong of *Golding*.

Our standard of review is well established. "When reviewing the challenged jury instruction . . . we must adhere to the well settled rule that a charge to the jury is to be considered in its entirety, read as a whole, and judged by its total effect rather than by its individual component parts. . . . [T]he test of a court's charge is not whether it is as accurate upon legal principles as the opinions of a court of last resort but whether it fairly presents the case to the jury in such a way that injustice is not done to either party under the established rules of law. . . . As long as [the instructions] are correct in law, adapted to the issues and sufficient for the guidance of the jury . . . we will not view the instructions as improper. . . .

"It is . . . constitutionally axiomatic that the jury be instructed on the essential elements of a crime charged. . . . The due process clause of the fourteenth amendment protects an accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged. . . . Consequently, the failure to instruct a jury on an element of a crime deprives a defendant of the right to have the jury told what crimes he is actually being tried for and what the essential elements of those crimes are. . . .

"[I]n reviewing a constitutional challenge to the trial court's instruction, we must consider the jury charge as a whole to determine whether it is reasonably possible that the instruction misled the jury. . . . The test is whether the charge as a whole presents the case to

the jury so that no injustice will result. . . . We will reverse a conviction only if, in the context of the whole, there is a reasonable possibility that the jury was misled in reaching its verdict. . . . A jury instruction is constitutionally adequate if it provides the jurors with a clear understanding of the elements of the crime charged, and affords them proper guidance for their determination of whether those elements were present. . . . An instruction that fails to satisfy these requirements would violate the defendant's right to due process of law as guaranteed by the fourteenth amendment to the United States constitution and article first, § 8, of the Connecticut constitution. . . . The test of a charge is whether it is correct in law, adapted to the issues and sufficient for the guidance of the jury. . . . The primary purpose of the charge is to assist the jury in applying the law correctly to the facts which they might find to be established. . . . The purpose of a charge is to call the attention of the members of the jury, unfamiliar with legal distinctions, to whatever is necessary and proper to guide them to a right decision in a particular case." (Internal quotation marks omitted.) *State* v. *Johnson*, 165 Conn. App. 255, 287–89, 138 A.3d 1108, cert. denied, 322 Conn. 904, 138 A.3d 933 (2016); *State* v. *McNeil*, 154 Conn. App. 727, 748, 106 A.3d 320, cert. denied, 316 Conn. 908, 111 A.3d 884 (2015).

In his appellate argument, the defendant focuses on (1) the absence of an instruction that the jury could not use Kunta's guilty plea to find that the crime of murder had been proven beyond a reasonable doubt and (2) the court's specific statement that the murder had been committed by a person other than the defendant. Our Supreme Court, in *State* v. *Just*, 185 Conn. 339, 347–48, 441 A.2d 98 (1981), stated: "The fact that one or more persons jointly charged with the commission of a crime pleaded guilty is not admissible on the trial of another person so charged, to establish that the

crime was committed. . . . This is so because a plea of guilty is, in effect, merely a confession of guilt, which, having been made by one of those charged with the crime, can be no more than hearsay as to another who is so charged. . . . After we decided [*State* v. *Pikul*, 150 Conn. 195, 198, 187 A.2d 442 (1962)], we had occasion to point out that *Pikul* stands for the principle that the guilty plea of one or more persons jointly charged with a crime cannot be admitted in the trial of another so charged to establish that the crime was committed. . . . *State* v. *DellaCamera*, 166 Conn. 557, 565, 353 A.2d 750 (1974) . . . . While such evidence may be offered to affect credibility . . . or for some permitted limited purpose, we believe a proper cautionary instruction to the jury should be given, generally upon objection overruled or sua sponte where the court views the potential for prejudice as likely." (Citations omitted; internal quotation marks omitted.)[22] See also *State* v. *Butler*, 55 Conn. App. 502, 510–11, 739 A.2d 732 (1999), aff'd, 255 Conn. 828, 769 A.2d 697 (2001).

The defendant's argument, however, fails to account for the entirety of the jury instructions. The court informed the jury that the state was required to prove each element of the crimes charged beyond a reasonable doubt. It iterated that "the state must prove each element of the offense, *including identification of the defendant*, beyond a reasonable doubt." (Emphasis added.) It limited the jury's use of Kunta's testimony

[22] We note, however, that our Supreme Court further reasoned that "[t]he lack of a curative instruction, especially in the absence of objection and a request for one, does not necessarily constitute harmful error." *State* v. *Just*, supra, 185 Conn. 348–49. Specifically, the court considered the fact that testimony of the accomplices established their guilt as well as that of the defendant, rendering any prejudice from the testimony regarding the pleas harmless. Id., 349. It also took into account the absence of a claim from the defendant that the evidence of the accomplices' guilty pleas had been highlighted by the state, as well as the entirety of the court's instructions to the jury. Id., 350–51.

regarding his conviction of murder to the determination of his credibility. The court further instructed that the state had to prove that the defendant "was the perpetrator of the crime" and that the jury had to determine the intent of the defendant. With respect to its definition of murder, the court noted that the state had to prove that the "defendant's conduct was the proximate cause of the [victim's] death. You must find it proved beyond a reasonable doubt that [the] victim died as a result of the actions of the defendant." In summarizing this offense, the court stated: "[F]or the crime of murder, the state must prove beyond a reasonable doubt that, one, the defendant intended to cause the death of another person; two, in accordance with that intent, the defendant caused the death of that person." This statement essentially was repeated during the court's discussion of the crime of accessory to murder. At the conclusion of that part of the instructions, the court specifically stated: "[Y]ou must unanimously find that the state has proved beyond a reasonable doubt that the defendant assisted another to commit the crime of murder. You must also unanimously find beyond a reasonable doubt that the defendant had the intent to commit the crime charged and did solicit, request, command, importune or intentionally aid another in the commission of the crime of murder." Finally, the court similarly instructed the jury with respect to the crime of the conspiracy to commit murder.

Having considered the charge as a whole, we are not convinced that the absence of an instruction that the jury could not use Kunta's guilty plea to find that the crime of murder had been proven beyond a reasonable doubt and the court's specific statement that Kunta was the principal offender in the murder misled the jury. In our view, the court's instructions provided the jury with a clear understanding of the elements of the crimes

charged, including whether the defendant was the perpetrator, and afforded proper guidance for the jury's determination of whether those elements were proved by the state. We emphasize that "[i]ndividual jury instructions should not be judged in artificial isolation, but must be viewed in the context of the overall charge. . . . The pertinent test is whether the charge, read in its entirety, fairly presents the case to the jury in such a way that injustice is not done to either party under the established rules of law. . . . Thus, [t]he whole charge must be considered from the standpoint of its effect on the [jurors] in guiding them to the proper verdict . . . and not critically dissected in a microscopic search for possible error." (Internal quotation marks omitted.) *State* v. *Hampton*, 293 Conn. 435, 452, 988 A.2d 167 (2009). Mindful of this standard, we conclude that the jury could not have been misled by the court's instructions. Accordingly, the defendant cannot prevail on this claim under the third prong of *Golding* because he has not established that a constitutional violation exists that deprived him of a fair trial. This claim, therefore, must fail.

III

The defendant finally claims that the court committed plain error by giving a special credibility instruction on accomplice testimony, which was unwarranted in this case. The defendant concedes that this claim was not preserved at trial and is not of constitutional magnitude, but argues that we should reverse his conviction under the plain error doctrine. See Practice Book § 60-5. We disagree.

The following additional facts are necessary for our discussion. In its instructions to the jury, the court stated: "Accomplice testimony. In weighing the testimony of an alleged accomplice who is a self-confessed criminal, Kunta Soyini, you should consider that fact.

It may be that you would not believe a person who has committed a crime as readily as you would believe a person of good character. He may have such an interest in the outcome of this case that his testimony may have been colored by that fact. Therefore, you must look with particular care at the testimony of an accomplice and scrutinize it very carefully before you accept it. There are many offenses that are of such a character that the only persons capable of giving useful testimony are those who are themselves implicated in the crime. It is for you to decide what credibility you will give to a witness who has admitted his involvement in a criminal wrongdoing, whether you will believe or disbelieve the testimony of a person who, by his own admission, has committed or contributed to the crimes charged by the state here. Like all questions of credibility, this is a question you must decide based on all the evidence presented to you."

"Generally, a defendant is not entitled to an instruction singling out any of the state's witnesses and highlighting his or her possible motive for testifying falsely. . . . An exception to this rule, however, involves the credibility of accomplice witnesses. . . . [W]here it is warranted by the evidence, it is the court's duty to caution the jury to scrutinize carefully the testimony if the jury finds that the witness intentionally assisted in the commission, or if he assisted or aided or abetted in the commission, of the offense with which the defendant is charged. . . . The court's duty to so charge is implicated only where the trial court has before it sufficient evidence to make a determination that there is evidence that the witness was in fact an accomplice." (Emphasis omitted; internal quotation marks omitted.) *State* v. *Walker*, 178 Conn. App. 345, 351–52, 175 A.3d 576 (2017), cert. denied, 327 Conn. 999, A.3d (2018); see also *State* v. *Jackson*, 178 Conn. App. 16, 26, 173 A.3d 974 (2017), cert. denied, 327 Conn. 998,

A.3d (2018); *Martin* v. *Commissioner of Correction*, 155 Conn. App. 223, 230–31, 108 A.3d 1174, cert. denied, 316 Conn. 910, 111 A.3d 885 (2015).

In the present case, the defendant argues that the court's special instruction regarding accomplice testimony was unwarranted. Specifically, he argues that because Kunta already had pleaded guilty and had been sentenced for the murder of the victim, "[h]e had no hope of obtaining favorable treatment from the state in exchange for his testimony . . . nor did he inculpate the defendant . . . ." (Citations omitted.)

As we noted previously, this claim was not preserved and is not of constitutional magnitude; accordingly, the defendant relies on the plain error doctrine. "It is well established that the plain error doctrine, codified at Practice Book § 60-5, is an extraordinary remedy used by appellate courts to rectify errors committed at trial that, although unpreserved [and nonconstitutional in nature], are of such monumental proportion that they threaten to erode our system of justice and work a serious and manifest injustice on the aggrieved party. [T]he plain error doctrine . . . is not . . . a rule of reviewability. It is a rule of reversibility. That is, it is a doctrine that this court invokes in order to rectify a trial court ruling that, although either not properly preserved or never raised at all in the trial court, nonetheless requires reversal of the trial court's judgment . . . for reasons of policy. . . . In addition, the plain error doctrine is reserved for truly extraordinary situations [in which] the existence of the error is so obvious that it affects the fairness and integrity of and public confidence in the judicial proceedings. . . . Plain error is a doctrine that should be invoked sparingly. . . . Implicit in this very demanding standard is the notion . . . that invocation of the plain error doctrine is reserved for occasions requiring the reversal of the judgment under review. . . .

"An appellate court addressing a claim of plain error first must determine if the error is indeed plain in the sense that it is patent [or] readily [discernible] on the face of a factually adequate record, [and] also . . . obvious in the sense of not debatable. . . . This determination clearly requires a review of the plain error claim presented in light of the record.

"Although a complete record and an obvious error are prerequisites for plain error review, they are not, of themselves, sufficient for its application. . . . [I]n addition to examining the patent nature of the error, the reviewing court must examine that error for the grievousness of its consequences in order to determine whether reversal under the plain error doctrine is appropriate. A party cannot prevail under plain error unless it has demonstrated that the failure to grant relief will result in manifest injustice. . . . In *State* v. *Fagan*, [280 Conn. 69, 87, 905 A.2d 1101 (2006), cert. denied, 549 U.S. 1269, 127 S. Ct. 1491, 167 L. Ed. 2d 236 (2007)], we described the two-pronged nature of the plain error doctrine: [An appellant] cannot prevail under [the plain error doctrine] . . . unless he demonstrates that the claimed error is both so clear and so harmful that a failure to reverse the judgment would result in manifest injustice." (Emphasis omitted; footnote omitted; internal quotation marks omitted.) *State* v. *Jamison*, 320 Conn. 589, 595–97, 134 A.3d 560 (2016).

The defendant has not demonstrated that the court's accomplice instruction constituted an error that "was so clear, obvious and indisputable as to warrant the extraordinary remedy of reversal" as required under our plain error analysis. (Internal quotation marks omitted.) *State* v. *Jackson*, supra, 178 Conn. App. 24. Additionally, even if we were to assume such error existed, we are not persuaded that the accomplice instruction in the present case constituted manifest injustice. Id. Simply stated, the defendant has failed to demonstrate that the

court's accomplice instruction "was of such monumental proportion that it threatened to erode our system of justice . . . or that it resulted in harm so grievous that fundamental fairness requires a new trial." (Citation omitted; internal quotation marks omitted.) Id., 29. Accordingly, we conclude that this claim of plain error is without merit.

The judgment is affirmed.

In this opinion the other judges concurred.

CARVALHOS MASONRY, LLC *v.* S AND L VARIETY CONTRACTORS, LLC (AC 39565)

Sheldon, Keller and Eveleigh, Js.

Syllabus

The plaintiff sought to recover damages from the defendant for breach of contract. After the trial court had denied the plaintiff's posttrial motion for leave to amend its complaint, in which it sought a reduced amount of damages on the basis of proposed amendments to certain allegations in its original complaint, the court wrote a letter to the parties, stating that while it was drafting its memorandum of decision, it had reviewed the plaintiff's motion for leave to amend the complaint, that the parties should revisit the plaintiff's suggestion in the proposed amended complaint that the matter be resolved for $35,005, and that if the parties agreed on that sum the court would render judgment in that amount. The plaintiff thereafter agreed to settle the matter for the $35,005 sum, but the defendant declined to do so. The court then issued its memorandum of decision and rendered judgment for the plaintiff in the amount of $35,005, from which the defendant appealed to this court. *Held* that the trial court should have disqualified itself from deciding the issues of liability and damages in the plaintiff's action for breach of contract following the court's failed attempt to convince the parties to stipulate to judgment in the amount of $35,005; although the record did not reflect that the court was biased in fact, it was clear that the court impermissibly adjudicated the issues of liability and damages after it recommended that the parties stipulate to judgment in the amount of damages to which the plaintiff claimed it was entitled in its proposed amended complaint, and even though this case did not involve the dangers often associated with a settlement judge presiding over the trial, such as a potential

revelation during settlement discussions that would not be admissible at trial and could prejudice a party, and this court did not find that the defendant's rejection of the court's suggested settlement resulted in some retributive sanction or the incurrence of judicial displeasure, to eliminate any appearance of impropriety and to avoid subtle suspicions of prejudice or bias, the trial court should have disqualified itself from deciding the issues presented, and a new trial was warranted.

Argued December 7, 2017—officially released March 13, 2018

Procedural History

Action to recover damages for breach of contract, and for other relief, brought to the Superior Court in the judicial district of Waterbury and tried to the court, *Hon. Barbara J. Sheedy*, judge trial referee; judgment for the plaintiff, from which the defendant appealed to this court. *Reversed; new trial.*

William J. Ward, for the appellant (defendant).

Nicole D. Dorman, for the appellee (plaintiff).

Opinion

SHELDON, J. In this action stemming from a construction contract, the defendant, S&L Variety Contractors, LLC, appeals from the judgment of the trial court rendered after a bench trial in favor of the plaintiff, Carvalhos Masonry, LLC. The defendant claims that the trial court should have disqualified itself from deciding the issues of liability and damages when it sent a correspondence to both parties, after the trial but before it rendered its decision, suggesting that they stipulate to a judgment for a specific dollar amount, the exact amount that the court ultimately awarded to the plaintiff. We agree with the defendant and, accordingly, reverse the judgment of the trial court and remand the case for a new trial.[1]

[1] The defendant also challenges the trial court's judgment on its merits. Because we reverse the matter for a new trial, we need not reach those arguments.

The following procedural history is relevant to our consideration of this appeal. The plaintiff commenced this action by service of the writ of summons and complaint on January 6, 2014. The plaintiff alleged that the defendant breached a contract in failing to pay for materials and services rendered in connection with the installation of a cinder block structure at 199 Laze Lane in Southington. The defendant denied the plaintiff's allegations and asserted four special defenses, which the plaintiff denied.

This case was tried to the court on April 19, 2016. On April 28, 2016, the plaintiff filed a motion for leave to amend its complaint to conform to the proof submitted at trial. The plaintiff sought to amend two of the five paragraphs of its complaint. In paragraph 4 of its original complaint, the plaintiff alleged: "Plaintiff fully performed its obligations under its agreement with the defendant." It sought to amend that paragraph to allege: "Plaintiff performed the work which was completed in July, 2012." The plaintiff also sought to amend paragraph 5 of its original complaint, which alleged that the defendant failed to "fully pay for the materials and services rendered" in the amount of "$41,960.71." It sought to amend that paragraph to allege that the defendant failed to "fully pay the balance due for the materials and services rendered" in the amount of "$35,005." The defendant objected to the plaintiff's motion for leave to amend its complaint on the ground that the proposed amendments did not, in fact, conform to the evidence adduced at trial. On May 16, 2016, the court sustained the defendant's objection. The parties filed posttrial briefs on May 19, 2016.

On July 21, 2016, the court faxed a letter to both parties, which stated: "I've taken a 'second look' at [the plaintiff's] motion for leave to amend complaint dated

4/27/16 and denied by me on 5/16/16. That second look came as I was writing a memorandum of decision.

"It occurs to me the parties ought to revisit [the plaintiff's] suggestion [that] the matter be resolved for the sum referenced in paragraph 5 of that 4/27/16 proposed amended complaint. If the parties are agreed on the sum referenced therein, I will enter judgment in that amount. This assumes of course none of the 'relief' ([in paragraphs] 1-5) would be granted."[2] The court ordered the parties to respond to its inquiry by July 26, 2016. On July 25, 2016, the plaintiff responded to the court that it would agree to the court's suggested settlement amount, $35,005. After the defendant's attorney secured a one week extension to respond to the court's inquiry because he was on vacation, the defendant, on August 1, 2016, declined to stipulate to the judgment proposed by the court. Eight days later, on August 9, 2016, the court issued a written memorandum of decision in which it rendered judgment in favor of the plaintiff in the amount of $35,005. This appeal followed.

The defendant claims on appeal that the court should have disqualified itself from deciding the issues of liability and damages following its failed attempt to convince the parties to stipulate to judgment in the amount of $35,005. We agree.

"When . . . a judge engages in [discussions] looking to the settlement of a case . . . in which he will be called upon to decide the issues of liability and damages . . . [i]t is . . . impossible to avoid questions as to whether the judge can disregard . . . matters disclosed in the conference . . . and whether a preliminary judgment, formed at the conference and predicated on unsubstantiated claims of proof, may

[2] Paragraphs 1 through 5 of the plaintiff's prayer for relief requested compensatory damages, interest, reasonable attorney's fees, costs and "[s]uch other relief in law or equity as determined by this court."

have some subtle influence on a final judgment after a full hearing. . . . It is inevitable that the basis is laid for suspicion, no matter how unfounded or unjustified it may be, and that failure to concur in what the judge may consider an adequate settlement may result in the imposition, upon a litigant or his counsel, of some retributive sanction or the incurrence of judicial displeasure. . . .

"When a civil case is to be tried before a jury, participation by the trial judge in pretrial settlement discussions is not likely to be raised as an issue for the purpose of disqualification of the judge. When [however] a judge engages in a pretrial settlement discussion in a court case, he should automatically disqualify himself from presiding in the case in order to eliminate any appearance of impropriety and to avoid subtle suspicions of prejudice or bias. Canons 2, 3 C (1) [now rule 2.11], Code of Judicial Conduct. If, however, all parties agree on the record, and stipulate that the judge may preside, then the infirmity is cured. See General Statutes § 51-39 (c) (When any judge is disqualified to act in any proceeding before him, he may act if the parties thereto consent in open court.)." (Citation omitted; internal quotation marks omitted.) *Timm* v. *Timm*, 195 Conn. 202, 204, 487 A.2d 191 (1985).

"The standard for appellate review of whether the facts require disqualification is whether the court's discretion has been abused. . . . Any conduct that would lead a reasonable [person] knowing all the circumstances to the conclusion that the judge's impartiality might reasonably be questioned is a basis for the judge's disqualification. Thus, an impropriety or the appearance of impropriety . . . that would reasonably lead one to question the judge's impartiality in a given proceeding clearly falls within the scope of the general standard

. . . . The question is not whether the judge is impartial in fact. It is simply whether another, not knowing whether or not the judge is actually impartial, might reasonably question his . . . impartiality, on the basis of all of the circumstances." (Citation omitted; internal quotation marks omitted.) *Advanced Financial Services, Inc.* v. *Associated Appraisal Services., Inc.*, 79 Conn. App. 22, 50, 830 A.2d 240 (2003).

Here, the defendant does not claim, nor does the record reflect, that the trial court was biased in fact. Nevertheless, it is clear that the court impermissibly adjudicated the issues of liability and damages after it recommended that the parties stipulate to judgment in the amount of damages to which the plaintiff claimed it was entitled in its proposed amended complaint. Although this case does not involve the dangers often associated with a settlement judge presiding over the trial, such as the potential revelation during settlement discussions that would not be admissible at trial and may prejudice one of the parties, one contemplated concern is directly at issue in this case, to wit: that the defendant's rejection of the court's suggested settlement may result in "some retributive sanction or the incurrence of judicial displeasure." (Internal quotation marks omitted.) *Timm* v. *Timm*, supra, 195 Conn. 204. We have not found, and need not find, that such retribution occurred in this case. In order, however, to "eliminate any appearance of impropriety and to avoid subtle suspicions of prejudice or bias"; id.; we conclude that the court should have disqualified itself from deciding the issues presented in this case.

The judgment is reversed and the case is remanded for a new trial.

In this opinion the other judges concurred.

WILLIAM ALBERT ARTIACO *v.* COMMISSIONER OF CORRECTION (AC 39862)

Lavine, Sheldon and Bishop, Js.

Syllabus

The petitioner, who had been convicted of the crimes of sexual assault in the first degree and risk of injury to a child, sought a writ of habeas corpus, claiming that his trial counsel had provided ineffective assistance. The habeas court rendered judgment denying the habeas petition and, thereafter, denied the petition for certification to appeal, and the petitioner appealed to this court. *Held* that the petitioner's claims that the habeas court erred in concluding that he was not denied the effective assistance of trial counsel and denying his petition for certification to appeal were not reviewable, the petitioner having failed to brief those claims adequately; the petitioner cited to no specific claim of error by the habeas court either in any heading or in the text of his brief, and he failed to identify which of the habeas court's determinations he was challenging and to present any legal or factual analysis in support of his broad claims that the habeas court erred in rejecting his ineffective assistance of trial counsel claim and denying his petition for certification to appeal.

Argued January 10—officially released March 13, 2018

Procedural History

Amended petition for a writ of habeas corpus, brought to the Superior Court in the judicial district of Tolland, where the court, *Sferrazza, J.*, rendered judgment denying the petition; thereafter, the court denied the petition for certification to appeal, and the petitioner appealed to this court. *Appeal dismissed.*

Robert J. McKay, assigned counsel, for the appellant (petitioner).

Michael J. Proto, assistant state's attorney, with whom, on the brief, was *Anne F. Mahoney*, state's attorney, for the appellee (respondent).

Opinion

SHELDON, J. The petitioner, William Albert Artiaco, appeals following the denial of his petition for certification to appeal from the judgment of the habeas court denying his petition for a writ of habeas corpus. The petitioner claims that the habeas court erred in concluding that he was not denied the effective assistance of trial counsel and denying his petition for certification to appeal.[1] Because the petitioner has failed to adequately brief his claims of error, we decline to review them, and thus dismiss the petitioner's appeal.

The habeas court set forth the following relevant procedural history. "The petitioner . . . seeks habeas corpus relief from a total, effective sentence of imprisonment for twenty years and ten years special parole, imposed following a jury trial at which the petitioner was convicted of sexual assault first degree and risk of injury to a minor in a file denoted as CR-09-0151382-0; and sexual assault first degree and risk of injury to a [child] in a second file denoted CR-09-0138933-T. The latter case had been transferred to the Windham Judicial District from the Hartford Judicial District for companionized adjudication. On June 21, 2013, the Appellate Court dismissed the appeal from the judgments of conviction because no appellate brief was filed in accordance with that court's orders, *State* v. *Artiaco*, AC 34962.

"The amended petition sets forth . . . a claim of ineffective assistance of trial counsel[2] . . . .

"At his criminal trial, Attorney Christopher Grotz represented the petitioner, and the petitioner specifies

[1] The petitioner also claimed that he was denied the effective assistance of appellate counsel. The habeas court agreed, and thus restored the petitioner's appellate case, *State* v. *Artiaco*, AC 34962, to the docket for scheduling of briefs in accordance with the rules and protocols of this court. That appeal remains pending.

[2] See footnote 1 of this opinion.

twenty ways in which trial counsel was ineffective, to wit:

"a. Trial counsel failed to sufficiently prepare for the petitioner's jury trial;

"b. Trial counsel agreed to represent the petitioner knowing that he lacked experience in litigating sexual assault cases;

"c. Trial counsel failed to secure, subpoena or otherwise arrange to have witnesses known to the trial counsel available for trial to provide exculpatory testimony on behalf of the petitioner who would have undermined the credibility of the state's witnesses and who would have provided testimony which would have been helpful in supporting and/or corroborating the petitioner's defense;

"d. Trial counsel failed to file motions to prevent or object to the transfer of docket number CR-09-0151382-0 from the Superior Court at the Hartford Judicial District to the Superior Court at Danielson G.A. # 11;

"e. Trial counsel failed to file a Motion to [Sever] at the Superior Court at Danielson G.A. # 11 to request separate trial on docket numbers CR-09-0151382-0 and CR-09-0138933-T;

"f. Trial counsel failed to file a motion in limine to challenge the state's introduction of prior misconduct to ensure that the court and state adhere to the guidelines set forth in *State* v. *Troupe*, 237 Conn. 284, [677 A.2d 917] (1996), during the jury trial;

"g. Trial counsel failed to file and/or argue a motion in limine to ensure that the testimony of the state's medical expert witness Dr. Nina Livingston would be limited to the general behavioral characteristics of sexual abuse victims and not cross the line into impermissible vouching and ultimate issue testimony, pursuant to

the holding within *State* v. *Favoccia*, 119 Conn. App. 1, [986 A.2d 1081] (2010), [aff'd, 306 Conn. 770, 51 A.3d 1002 (2012)];

["h. Trial counsel failed to file and/or argue a motion in limine to ensure that the testimony of the state's [medical] expert witness Diane Edell would be limited to the general behavioral characteristics of sexual abuse victims and not cross the line into impermissible vouching and ultimate issue testimony, pursuant to the holding within *State* v. *Favoccia*, (supra,) 119 Conn. App. 1;]

"i. Trial counsel failed to secure, subpoena or otherwise arrange to have [Department of Children and Families] records introduced as exhibits and/or available for trial for impeachment of witnesses;

"j. Trial counsel failed to identify, pursue, investigate and present any defense prior to and during the petitioner's jury trial;

"k. Trial counsel did not sufficiently cross-examine and make further inquiry of the state's witnesses to impeach their credibility;

"l. Trial counsel failed to subpoena or otherwise arrange to have witnesses available to testify at trial that would have testified favorably for the petitioner;

"m. Trial counsel did not adequately investigate the evidence and/or the state witnesses prior to trial;

"n. Trial counsel failed to properly retain an appropriate expert in regarding interviewing child victims of sexual abuse to counter the state's evidence and/or testimony of the state's witnesses at trial;

"o. Trial counsel failed to adequately prepare defense witnesses for direct and/or cross-examination during the jury trial;

"p. Trial counsel failed to conduct any investigation of the state's witnesses and/or its evidence in the preparation of the petitioner's jury trial;

"q. Trial counsel failed to adequately prepare the testimony of the petitioner's expert witness Dr. James J. Connolly prior and/or during the jury trial;

"r. Trial counsel failed to sufficiently research and prepare an argument to the court in anticipation of offering the testimony of the petitioner's expert witness Dr. James J. Connolly during the jury trial;

"s. Trial counsel made inappropriate comments in his closing that the complainant had been actually sexually assaulted, thus bolstering her credibility and undermining the petitioner's denial of guilt;

"t. Trial counsel improperly argued third-party culpabililty during his closing argument, knowing that there was no permissible inference based on the state's evidence for such argument, resulting in the appearance of impropriety before the jury through the trial court's admonition that there was no evidence that anyone other than the petitioner committed the alleged crimes." (Footnote added.)

The habeas court summarily rejected ten of the petitioner's specifications of ineffective assistance on the ground that the petitioner provided no credible evidence to support those allegations, specifically, grounds a, b, c, i, j, k, l, m, o, and p. The habeas court addressed the petitioner's remaining allegations of ineffective assistance, explaining the factual and legal bases for each of them. The court found that the petitioner failed to prove deficient performance as to his allegations that: Grotz failed to prevent his two criminal cases from being tried together (d and e); Grotz failed to file motions in limine to prohibit Livingston and Edell from testifying about the victim's credibility and the ultimate

question of whether she was sexually abused (g and h); that better preparation by Grotz would have altered the trial court's ruling to preclude his expert's testimony (q and r); and Grotz's belated presentation of a third-party culpability defense during final argument amounted to a concession that the victim had been sexually abused and prompted the trial court to state, in the jury's presence, that such a defense was baseless and improper (s and t). The habeas court found that Grotz's performance was deficient in failing to file motions in limine to restrict constancy of accusation testimony (f), but that the petitioner had failed to prove that he was prejudiced by said deficiency. The court also found that the petitioner had failed to prove that he was prejudiced by Grotz's failure to retain an appropriate expert regarding the conduct of the interviews of the victim (n). The court thus denied the petition for a writ of habeas corpus based upon the alleged ineffective assistance of trial counsel. The habeas court thereafter denied certification to appeal, and this appeal followed.[3]

On appeal, the petitioner frames the substantive issue for our review as "whether the habeas court erred in denying the habeas petition where trial counsel was ineffective and prejudice resulted." He cites to no specific claim of error by the habeas court, either in any heading or in the text of his brief. "Ordinarily, [c]laims are inadequately briefed when they are merely mentioned and not briefed beyond a bare assertion. . . . Claims are also inadequately briefed when they . . . consist of conclusory assertions . . . with no mention of relevant authority and minimal or no citations from

[3] In his petition for certification to appeal, the petitioner did not specify which of the habeas court's findings or conclusions he sought to challenge on appeal. Instead, he broadly asserted that the habeas court erred in denying his claim of ineffective assistance because he had proven the claim by a preponderance of the evidence.

the record . . . . As a general matter, the dispositive question in determining whether a claim is adequately briefed is whether the claim is reasonably discernible [from] the record . . . .'' (Citation omitted; internal quotation marks omitted.) *In re Elijah C.*, 326 Conn. 480, 495, 165 A.3d 1149 (2017). ''We are not required to review issues that have been improperly presented to this court through an inadequate brief. . . . Analysis, rather than mere abstract assertion, is required in order to avoid abandoning an issue by failure to brief the issue properly.'' (Internal quotation marks omitted.) *State* v. *Fowler*, 178 Conn. App. 332, 345, 175 A.3d 76 (2017), cert. denied, 327 Conn. 999, 176 A.3d 556 (2018).

Although the petitioner set forth the standards of review pertaining to his claims that the court erred in rejecting his claim of ineffective assistance of trial counsel and denying his petition for certification to appeal, he fails to present any legal or factual analysis in support of those broad claims. In fact, in his brief to this court, the petitioner fails to identify which of the habeas court's determinations he is challenging, either by way of putting headings on his arguments or addressing them in the text of his purported analysis. In his thirty-five page brief, the petitioner begins his ''argument'' on page thirty, commencing with a paragraph that exceeds two full pages in length and can only be described as a stream of consciousness condemnation of Grotz's representation of the petitioner at his criminal trial. The petitioner refers broadly and vaguely to various allegations of errors and omissions by Grotz at the petitioner's criminal trial. The pages that follow fare no better. The petitioner's ''argument'' consists only of allegations of deficient performance—both vague and conclusory—with no reference whatsoever to the habeas court's resolution of those allegations. His brief is devoid of any claim of error by the habeas court. In the absence of specific challenges to the habeas court's

rulings, it goes without saying that his brief is bereft of any legal analysis challenging those rulings.

The petitioner's reply brief is a scant improvement over his initial brief. There, the petitioner focuses primarily on alleged inadequacies in the respondent's brief. Although he does make passing mention of certain alleged errors by the habeas court, he again fails to set forth, in any coherent fashion, legal or factual analyses in support of his claim that the habeas court erred in denying any aspect of his claim of ineffective assistance of counsel. Like his initial brief, the petitioner's reply brief is riddled with incomplete and incomprehensible sentences. His briefs are a model of abstract and conclusory assertions, rendering his claims indiscernible and, thus, unreviewable.

The appeal is dismissed.

In this opinion the other judges concurred.