IN RE TARIK C.*
(AC 46142)

Alvord, Suarez and Seeley, Js.

Argued May 24—officially released September 29, 2023**

Syllabus

The respondent mother appealed to this court from the judgment of the trial court terminating her parental rights with respect to her minor child. The trial court found, pursuant to statute (§ 17a-112 (j) (3) (B) (i)), that the mother had failed to achieve a sufficient degree of personal rehabilitation, considering the age and needs of the child, as would encourage the belief that, within a reasonable time, she could assume a responsible position in her child's life. The mother claimed on appeal, inter alia, that the trial court erroneously failed to rule on her oral motion for a directed verdict that she had raised at the close of the petitioner's case-in-chief, arguing that the trial court should have considered the motion a motion for a judgment of dismissal pursuant to the applicable rule of practice (§ 15-8), rather than a motion for a directed verdict pursuant to the rule of practice (§ 16-37) that permits the judicial authority to reserve decision on such a motion, and that, had the trial court properly considered the motion as a motion for a judgment of dismissal under Practice Book § 15-8, the trial court would have lacked the discretion to have reserved its ruling. *Held*:

1. The trial court did not err when it failed to rule on an oral motion for a directed verdict that counsel for the respondent mother raised at the close of the petitioner's case-in-chief: under the unique circumstances of the present case, because the remarks made by trial counsel for the

* In accordance with the spirit and intent of General Statutes § 46b-142 (b) and Practice Book § 79a-12, the names of the parties involved in this appeal are not disclosed. The records and papers of this case shall be open for inspection only to persons having a proper interest therein and upon order of the court.

** September 29, 2023, the date that this decision was released as a slip opinion, is the operative date for all substantive and procedural purposes.

mother, both initially when the motion was made, and later when the motion was renewed, articulated the motion with sufficient clarity to place the trial court and opposing trial counsel on notice that the mother's counsel was making a motion for a directed verdict, which led the trial court to evaluate the motion under Practice Book § 16-37, the invited error doctrine applied, and the mother could not be heard to complain that the trial court improperly treated the motion as one based on § 16-37, rather than Practice Book § 15-8, and reserved judgment in accordance with its authority under § 16-37; moreover, when the trial court aptly questioned the applicability of a motion for a directed verdict in juvenile matters, but, nevertheless, entertained the motion, the mother's counsel did not object to the trial court's response to the motion; furthermore, in concluding that the invited error doctrine applied, this court was not required to address the mother's related claim that the waiver rule should not apply to this case to bar appellate review of the court's decision to reserve judgment on the motion.

2. The trial court properly found by clear and convincing evidence, on the basis of its factual findings and reasonable inferences drawn therefrom, that the respondent mother failed to achieve a sufficient degree of rehabilitation necessary to have encouraged the belief that, within a reasonable time, considering the age and needs of the child, she could have assumed a responsible position in the child's life; the record demonstrated that the trial court considered all potentially relevant evidence in reaching its conclusion, including the testimony of two licensed psychologists and a family support specialist, as well as their written reports, which were admitted into evidence, that the mother remained vulnerable to psychosocial stressors, her continued use of alcohol socially made her a high risk for relapse of other drugs, that returning the child to the mother would set her up to fail as a parent because she was incapable of managing her child's needs, and that there were continued concerns with the mother's compliance with her prescribed mental health treatment, particularly in taking psychotropic medicine, as well as continued concerns with the mother's suicidal ideations and self-harming behaviors.

Procedural History

Petition by the Commissioner of Children and Families to terminate the respondents' parental rights with respect to their minor child, brought to the Superior Court in the judicial district of Tolland, Juvenile Matters at Rockville, and tried to the court, *Westbrook, J.*; judgment terminating the respondent mother's parental rights, from which the respondent mother appealed to this court. *Affirmed.*

Matthew C. Eagan, assigned counsel, for the appellant (respondent mother).

Thadius L. Bochain, assistant attorney general, with whom, on the brief, were *William Tong*, attorney general, and *Evan O'Roark*, assistant attorney general, for the appellee (petitioner).

Opinion

SUAREZ, J. The respondent mother, Elizabeth C., appeals from the judgment of the trial court, rendered in favor of the petitioner, the Commissioner of Children and Families, terminating her parental rights with respect to her minor child, Tarik C. (Tarik).[1] On appeal, the respondent claims that the court erred (1) when it failed to rule on an oral motion for a directed verdict that she raised at the close of the petitioner's case-in-chief, and (2) in concluding that she failed to rehabilitate.[2] We affirm the judgment of the court.

The following facts, as found by the court or otherwise undisputed, and procedural history are relevant to our resolution of the respondent's claims on appeal. Tarik, who was born in January, 2017, is the respondent's third child. "None of her children are in her care. [The respondent] was previously involved with the Florida [Department of Children and Families] because of intimate partner violence, substance use, suicidal ideation, and unaddressed mental health issues. [The respondent's] first child, born in January, 2008, was removed from her care due to unaddressed psychiatric conditions, substance use, and intimate partner

[1] In the same proceeding, the petitioner also sought to terminate the respondent father's parental rights; however, the court did not grant that petition. The respondent father is not participating in this appeal. All references in this opinion to the respondent are to the mother only.

[2] The attorney for the minor child filed a statement in accordance with Practice Book § 67-13 adopting the brief filed by the petitioner and asking the court to affirm the judgment of the court.

violence. [The respondent's] parental rights to that child were terminated in January of 2009. [The respondent's] second child, born in May, 2012, has remained in the care of his father in Florida since [the respondent] left Florida in November, 2012.

"The [Connecticut Department of Children and Families (department)] became involved soon after Tarik's birth [in Connecticut] after a referral from the hospital reporting that [the respondent] gave birth to Tarik at thirty-five weeks due to a placenta abruption and that Tarik's meconium tested positive for marijuana. It was also noted that [the respondent] tested positive for marijuana on December 16, 2016, but was negative on January 4 and 8, 2017. The department received another referral on January 12, 2017, from an anonymous caller reporting that [the respondent] had a child protection history in the state of Florida. The department opened an investigation and discovered [the respondent's] extensive past child protection history in Florida. The department also learned of [the respondent's] previous diagnoses of bipolar disorder and schizoaffective behaviors. In response, [the respondent] reported that, once she moved to Connecticut, she no longer had these mental health issues and she ceased taking psychiatric medication.

"On January 27, 2017, the department requested an order of temporary custody [and filed a petition for neglect] due to [the respondent's] substance use, unaddressed mental health issues, lack of stable housing and her inability to care for the child. At the time of the original petition, the respondent father was not actively involved in the legal case but he was involved in Tarik's life. At the time, the father had no plan for the care of Tarik." On February 3, 2017, the court, *Westbrook, J.*, sustained the order of temporary custody. On May 4, 2017, Tarik was adjudicated neglected and committed to the care and custody of the petitioner. On August 8,

2018, the court returned Tarik to the respondent's care under a six month order of protective supervision.

While Tarik was in the care of the respondent, her mental health deteriorated. "In September, 2018, [she] was charged with possession of a controlled substance. [She] refused to submit to urine screens as the court ordered in the [court's] specific steps. In October of 2018, [the respondent] informed the department that she had not paid rent since May of 2018, and that she was about to be evicted. [She] also disclosed that she did not know how to handle some of Tarik's behaviors. [The respondent] was referred for services to address each of the concerns she raised. In November, 2018, [she] told a department social worker that she had a plan to commit suicide. [The respondent] indicated that she would commit suicide similar to her own mother by taking an overdose of prescription medication. [She] was again referred to services to address her mental health concerns. Later in November, 2018, [she] again made suicidal statements during a session with a mental health provider . . . . Further, [the respondent] expressed that, in addition to killing herself, she also wanted to throw Tarik out of the window."

On November 26, 2018, the petitioner invoked a ninety-six hour administrative hold over Tarik. Two days later, the petitioner filed, and the court subsequently granted, a second request for an order of temporary custody. In its order, the court found that Tarik was in immediate physical danger from his surroundings, ordered that he be placed in the temporary care and custody of the petitioner, and issued new specific steps for the respondent. In an addendum to the specific steps, the court indicated that the respondent was to "[a]ddress mental health needs in individual counseling in order to maintain emotional stability and be a stable resource for Tarik." On January 31, 2019, Tarik was

again committed to the care and custody of the petitioner.

"In November of 2019, [the respondent] moved out of the apartment the department assisted her with and . . . into a three bedroom home in Manchester owned by [Tarik's] father. [Tarik's] [f]ather indicated that he believed the neighborhood [the respondent had been] . . . living in was dangerous. . . . [The respondent] paid [Tarik's] father rent and [he] paid for [her] groceries and half of her bills. In January of 2020, [the respondent] informed the department that [Tarik's] father's wife recently became aware that [he] was having a sexual relationship with [the respondent] and that [Tarik] was born as a result of the affair. [The respondent] also informed the department that she was so upset about this that she began cutting herself again. [The respondent] was referred to a new service near her new home to address her mental health needs. At this point, the department determined that Tarik had been in [its] care for over three years; Tarik had no permanency, and reunification with [the respondent] was not foreseeable."

On August 26, 2020, the petitioner filed a petition for the termination of the respondent's parental rights as to Tarik. The petition alleged that, pursuant to General Statutes § 17a-112 (j) (3) (B) (i), the respondent had failed to rehabilitate. On October 6, 2021, a trial commenced and continued on November 8, 2021, January 3 and 24, May 4 and 23, and September 28, 2022. Numerous exhibits were entered into the record and eighteen witnesses, including several experts, testified.

The trial concluded on September 28, 2022, and, on November 8, 2022, the court issued a memorandum of decision in which it terminated the parental rights of the respondent. In its memorandum of decision, the court found, by clear and convincing evidence, that

Tarik previously had been adjudicated neglected, that the department had provided reasonable efforts to locate the respondent and reunify her with Tarik, that the respondent failed to rehabilitate, and that it was in the best interests of Tarik to terminate the respondent's parental rights.[3]

In its memorandum of decision, the court noted that, "[d]espite [the respondent's] economic and housing stability, the court's concerns are the stability of [her] mental health. [The respondent] has a long history of mental health issues that have led to three children being removed from her care. Tarik was reunified with [the respondent] on one occasion. [The respondent's] ruminating thoughts of harming her children are also concerning. The court-ordered psychological evaluator, Dr. Derek Franklin, raised similar concerns about [the respondent's] ability to parent Tarik long-term." The court found by clear and convincing evidence that the respondent was referred to three different services for individual counseling to address her mental health concerns. Despite the respondent's participation in these services, the court found that the respondent "has not addressed her mental health needs to maintain emotional stability as a resource for Tarik. [The respondent's] therapist reports that [the respondent] has a new diagnosis of anxiety disorder. In addition, Dr. Franklin opined in his psychological evaluation that [the respondent] continues to display symptoms of a mood disorder and anxiety, and that returning Tarik to [her] care would likely be a stressor." The court concluded that, "having considered all of the evidence and statutory considerations, and having found by clear and convincing evidence that grounds exist for the termination of parent

[3] The respondent challenges only the court's finding that she failed to rehabilitate pursuant to § 17a-112 (j) (3) (B) (i). She does not challenge the court's findings that the department made reasonable efforts to reunify her with Tarik or that the termination of her parental rights was in the best interests of Tarik.

rights as to the respondent . . . the court further finds by clear and convincing evidence upon all the facts and circumstances presented that it is in the child's best interest to terminate the parental rights of the respondent . . . .'' This appeal followed. Additional facts and procedural history will be provided as necessary.

I

The respondent first claims that the court erred when it failed to rule on an oral motion for a directed verdict that she raised at the close of the petitioner's case-in-chief. We disagree.

The following additional facts are relevant to this claim. On January 3, 2022, after the petitioner rested her case-in-chief, counsel for the respondent made an oral motion asking the court to deny the petition, but counsel did not specify the rule of practice, if any, on which he relied when raising the motion. The respondent's counsel argued: ''I believe that with all of the evidence that has been put on with all the witnesses that have been called, I don't believe that the state has made their case, has put enough evidence to be able to sustain the grounds that they brought this termination under.'' In response, counsel for the petitioner argued that the motion was legally and factually inappropriate. Referring to *Curran* v. *Kroll*, 118 Conn. App. 401, 407, 984 A.2d 763, aff'd, 303 Conn. 845, 37 A.3d 700 (2012), the petitioner's counsel argued: ''*Directed verdicts* are not favored. A trial court should only direct a verdict if a fact finder, a jury, cannot reasonably and legally reach any other conclusion.''[4] (Emphasis added.) After listening to the arguments concerning the respondent's

[4] *Curran* involved a medical malpractice action that was tried to a jury in which the trial court granted the defendant's motion for a directed verdict, concluding that there was no evidence presented by the plaintiff in her case-in-chief that the defendant breached the standard of care in treating the plaintiff. *Curran* v. *Kroll*, supra, 118 Conn. App. 406. This court in *Curran* reversed the trial court's judgment. Id., 403. In setting forth the standard for appellate review of a directed verdict, this court explained that ''[d]irected

motion, the court reserved ruling on the motion, and neither party objected to that course of action.

On May 4, 2022, prior to presenting evidence, counsel for the respondent renewed the motion, which he now characterized as a motion for a directed verdict. Counsel for the respondent argued that "at the conclusion of the state's case, I had made a motion—an oral motion for a *directed verdict* based on the fact that I did not believe that [the petitioner] met [her] burden of proof to satisfy the granting of the [petition to terminate her parental rights]. I renew my motion at this point. I think . . . nothing has come to light to support their case." (Emphasis added.) Counsel for the petitioner renewed his objection to the motion. In considering the motion, the court asked the parties if they had "ever seen a directed verdict . . . in a [termination of parental rights case]." Counsel for the petitioner indicated that he had, and he stated that the standard "would basically be that . . . no judge would ever find that there would be grounds . . . to terminate, even based on construing all the evidence [in the light] most favorable to the [petitioner]." The court agreed with the petitioner's counsel but did not rule on the motion and indicated that, "I think we're going to have to finish the trial." Neither party objected to this ruling.

In her appellate brief, the respondent acknowledges that a motion for a directed verdict is not procedurally proper in the context of a trial on a petition to terminate parental rights. The respondent argues, however, that, although "trial counsel appeared to be making a motion

verdicts are not favored. . . . A trial court should direct a verdict only when a jury could not reasonably and legally have reached any other conclusions. . . . A directed verdict is justified if . . . the evidence is so weak that it would be proper for the court to set aside a verdict rendered for the other party." (Internal quotation marks omitted.) Id., 407.

for directed verdict akin to a motion contemplated by Practice Book § 16-37,[5] it should have been deemed, as argued [subsequently], as a motion for . . . [judgment] of dismissal pursuant to Practice Book § 15-8."[6] Viewing

[5] Chapter 16 of the Practice Book, titled "Jury Trials," is in the portion of the Practice Book devoted to "Procedure in Civil Matters." Practice Book § 16-37 provides: "Whenever a motion for a directed verdict made at any time after the close of the plaintiff's case-in-chief is denied or for any reason is not granted, the judicial authority is deemed to have submitted the action to the jury subject to a later determination of the legal questions raised by the motion. The defendant may offer evidence in the event the motion is not granted, without having reserved the right to so do and to the same extent as if the motion had not been made. After the acceptance of a verdict and within the time stated in Section 16-35 for filing a motion to set a verdict aside, a party who has moved for a directed verdict may move to have the verdict and any judgment rendered thereon set aside and have judgment rendered in accordance with his or her motion for a directed verdict; or if a verdict was not returned such party may move for judgment in accordance with his or her motion for a directed verdict within the aforesaid time after the jury has been discharged from consideration of the case. If a verdict was returned, the judicial authority may allow the judgment to stand or may set the verdict aside and either order a new trial or direct the entry of judgment as if the requested verdict had been directed. If no verdict was returned, the judicial authority may direct the entry of judgment as if the requested verdict had been directed or may order a new trial."

"The trial court . . . [under Practice Book § 16-37] may grant the motion, deny the motion, *or reserve decision on the motion*." (Emphasis in original.) *Riley* v. *Travelers Home & Marine Ins. Co.*, 333 Conn. 60, 72, 214 A.2d 345 (2019). "Practice Book § 16-37 treats the trial court's election to reserve decision as the equivalent of a denial of the motion for purposes of subsequent proceedings, which is why the rule states that the case is deemed to have been submitted to the jury subject to a later determination of the legal questions raised by the motion if, for any reason, the motion is not granted . . . . In the event that the jury thereafter returns a verdict for the plaintiff, the rule provides what steps the unsuccessful defendant may take to renew any legal claims previously raised in its motion for a directed verdict: After the acceptance of a verdict and within the time stated in Section 16-35 for filing a motion to set a verdict aside, a party who has moved for a directed verdict may move to have the verdict and any judgment rendered thereon set aside and have judgment rendered in accordance with his or her motion for a directed verdict . . . ." (Citation omitted; internal quotation marks omitted.) Id., 72–73.

[6] Chapter 15 of the Practice Book, titled "Trials in General; Argument by Counsel," is in the portion of the Practice Book devoted to "Procedure in Civil Matters." Practice Book § 15-8 provides: "If, on the trial of any issue of fact in a civil matter tried to the court, the plaintiff has produced evidence and rested, a defendant may move for judgment of dismissal, and the judicial

the motion as a motion for a judgment of dismissal, rather than a motion for a directed verdict, the respondent argues that the court lacked the discretion to have reserved ruling on the motion. She argues that, "had the trial court recognized the motion as one that was more properly presented as a motion to dismiss for failure to make out a prima facie case, it would have been prohibited from reserving judgment because a motion for judgment of dismissal must be made by the defendant and decided by the court after the plaintiff has rested his case, but before the defendant presents evidence. *Cormier* v. *Fugere*, 185 Conn. 1, 2, [440 A.2d 820] (1981)."

Furthermore, the respondent seeks to avoid the application of the waiver rule, which applies following the denial of, or the functional equivalent of the denial of,

authority may grant such motion if the plaintiff has failed to make out a prima facie case. The defendant may offer evidence in the event the motion is not granted, without having reserved the right to do so and to the same extent as if the motion had not been made."

"The standard for determining whether the plaintiff has made out a prima facie case, under Practice Book § 15-8, is whether the plaintiff put forth sufficient evidence that, *if believed*, would establish a prima facie case, not whether the trier of fact believes it. . . . For the court to grant the motion [for a judgment of dismissal pursuant to § 15-8], it must be of the opinion that the plaintiff has failed to make out a prima facie case. In testing the sufficiency of the evidence, the court compares the evidence with the allegations of the complaint. . . . In order to establish a prima facie case, the proponent must submit evidence which, if credited, is sufficient to establish the fact or facts which it is adduced to prove. . . . [T]he evidence offered by the plaintiff is to be taken as true and interpreted in the light most favorable to [the plaintiff], and every reasonable inference is to be drawn in [the plaintiff's] favor. . . . Whether the plaintiff has established a prima facie case is a question of law, over which our review is plenary." (Emphasis in original; internal quotation marks omitted.) *In re Natalie J.*, 148 Conn. App. 193, 204, 83 A.3d 1278, cert. denied, 311 Conn. 930, 86 A.3d 1056 (2014). "[A] motion for judgment of dismissal must be made by the defendant *and decided by the court* after the plaintiff has rested his case, but before the defendant produces evidence." (Emphasis in original; internal quotation marks omitted.) *Moutinho* v. *500 North Avenue, LLC*, 191 Conn. App. 608, 619, 216 A.3d 667, cert. denied, 333 Conn. 928, 218 A.3d 68 (2019).

a motion for a directed verdict.[7] By operation of the waiver rule, the respondent would be precluded from challenging on appeal the court's failure to grant her motion for a directed verdict. The respondent argues that the waiver rule is inapplicable in the present case because the court lacked the discretion to reserve the right to rule on a motion to dismiss under Practice Book § 15-8.

Beyond relying on the waiver rule, the petitioner argues that the present claim is unpreserved, and constitutes an improper ambush of the trial court, because the respondent claims, for the first time on appeal, that the court should have recognized that the motion, framed as a motion for a directed verdict, in fact sought a judgment of dismissal pursuant to Practice Book § 15-8. As the petitioner correctly asserts, at trial, the respondent's counsel explicitly referred to the motion at issue that was raised at the conclusion of the petitioner's case-in-chief as "an oral motion for a directed verdict." The petitioner also argues that "[the respondent's trial counsel] did not argue at trial that it was procedurally improper for the court to reserve judgment on his motion; rather, after moving for a directed verdict on January 3, [2022], he agreed to put on his case-in-chief

[7] Under the waiver rule, "when a trial court denies a defendant's motion for a directed verdict at the close of the plaintiff's case, the defendant, by opting to introduce evidence in his or her own behalf, waives the right to appeal the trial court's ruling. . . . The rationale for this rule is that, by introducing evidence, the defendant undertakes a risk that the testimony of defense witnesses will fill an evidentiary gap in the [plaintiff's] case." (Citations omitted; internal quotation marks omitted.) *In re James L.*, 55 Conn. App. 336, 340, 738 A.2d 749, cert. denied, 252 Conn. 907, 743 A.2d 618 (1999). Here, the petitioner argues that the trial court's decision to reserve judgment on the motion was the functional equivalent of a denial of that motion. Moreover, the petitioner argues that, in light of the fact that the respondent presented evidence following the court's decision to reserve judgment on the motion for a directed verdict, the waiver rule applies to preclude the respondent from challenging the court's ruling on the motion in the present appeal.

and called several witnesses to testify on behalf of his client. [The respondent's counsel's] failure to argue distinctly that it was procedurally improper for the court to defer ruling on his motion, coupled with his decision to put on a case-in-chief, failed to alert the court to the precise claim of procedural error raised on appeal and deprived the court of the ability to correct the claimed error while there was time to fix it." In arguing that the present claim constitutes an "ambush" of the trial court, the petitioner asserts that, "[r]egardless of whether a motion for directed verdict was procedurally proper, that was the sole claim that [the respondent's counsel] made [at the time of trial]."

The petitioner's reviewability argument goes beyond the simple issue of whether the respondent properly preserved the present claim for appellate review and has invoked the application of the invited error doctrine.[8] We conclude that, under the unique circumstances of the present case, the respondent cannot be heard to complain that the court improperly treated the motion as one based on Practice Book § 16-37, and then reserved judgment in accordance with its authority under that rule of practice, because the court plainly did so based on the representations of the respondent's trial counsel.

"Absent some indication to the contrary, a court is entitled to rely on counsel's representations on behalf

[8] "It is well settled that [o]ur case law and rules of practice generally limit [an appellate] court's review to issues that are distinctly raised at trial. . . . [O]nly in [the] most exceptional circumstances can and will this court consider a claim, constitutional or otherwise, that has not been raised and decided in the trial court. . . . The reason for the rule is obvious: to permit a party to raise a claim on appeal that has not been raised at trial—after it is too late for the trial court or the opposing party to address the claim—would encourage trial by ambuscade, which is unfair to both the trial court and the opposing party." (Internal quotation marks omitted.) *In re Sequoia G.*, 205 Conn. App. 222, 235, 256 A.3d 195, cert. denied, 338 Conn. 904, 258 A.3d 675 (2021).

of his or her client." (Internal quotation marks omitted.) *State* v. *Hall*, 303 Conn. 527, 536, 35 A.3d 237 (2012). "This court routinely has held that it will not afford review of claims of error when they have been induced. [T]he term induced error, or invited error, has been defined as [a]n error that a party cannot complain of on appeal because the party, through conduct, encouraged or prompted the trial court to make the erroneous ruling. . . . It is well established that a party who induces an error cannot be heard to later complain about that error. . . . This principle bars appellate review of induced nonconstitutional and induced constitutional error. . . . The invited error doctrine rests on the principles of fairness, both to the trial court and to the opposing party." (Internal quotation marks omitted.) *Snowdon* v. *Grillo*, 114 Conn. App. 131, 139, 968 A.2d 984 (2009).

Even though the present action was tried to the court and not to a jury, the remarks made by counsel for the respondent, both initially when the motion was made and later when the motion was renewed, articulated the motion with sufficient clarity to place the court and opposing counsel on notice that the respondent's counsel was making a motion for a directed verdict.[9] The record leads us to conclude that the respondent's counsel's representations led the court to evaluate the motion under Practice Book § 16-37. The court aptly questioned the applicability of a motion for a directed verdict in juvenile matters but, nevertheless, entertained the motion.[10] Relying on the arguments of the

[9] As we have explained, the record reflects that, initially, when making the oral motion, counsel for the respondent did not specify what motion he was bringing or the rule of practice on which he relied. Counsel for the petitioner did, however, characterize the respondent's motion as a directed verdict motion, a characterization to which the respondent did not object at trial. Furthermore, when renewing the motion, the respondent's counsel unequivocally stated that the motion was a directed verdict motion.

[10] Practice Book § 1-1, which outlines the scope of our rules of practice, provides in relevant part that "(a) [t]he rules for the Superior Court govern the practice and procedure in the Superior Court in all civil and family

respondent's counsel that were raised at the time of trial, the court, treated the motion as one seeking a directed verdict and exercised its discretion to reserve judgment on the motion, as permitted under § 16-37. The respondent's counsel did not object to the court's response to the motion. In light of the foregoing, we conclude that it would be unfair to permit the respondent to challenge the court's decision to reserve judgment on the motion for a directed verdict. Having reached the conclusion that the invited error doctrine applies, we need not address the respondent's related claim that the waiver rule should not apply in this case to bar appellate review of the court's decision to reserve judgment on the motion.

II

The respondent next claims that the court erred in concluding that she failed to rehabilitate pursuant to § 17a-112 (j) (3) (B) (i). Specifically, she argues that the evidence on which the court based its decision was not sufficient to support a finding, by clear and

actions whether cognizable as cases at law, in equity or otherwise, in all criminal proceedings and in all proceedings on juvenile matters. . . ." The rules of practice and procedure that specifically govern juvenile matters are codified in Chapters 26 through 35a of the Practice Book. Practice Book § 34a-1 (b) provides in relevant part: "The provisions of . . . [§] 15-8 . . . of the rules of practice shall apply to juvenile matters . . . ." As our courts have recognized, a respondent in a proceeding to terminate parental rights properly may challenge whether the petitioner has established a prima facie case by means of a motion to dismiss brought pursuant to Practice Book § 15-8. See also *In re Devon W.*, 124 Conn. App. 631, 639–41, 6 A.3d 100 (2010) (rejecting claim that trial court improperly denied motion brought pursuant to Practice Book § 15-8 to dismiss petitions for termination of parental rights of respondent parents on ground that petitioner failed to produce sufficient evidence to establish prima facie case); see also *In re Nasia B.*, 98 Conn. App. 319, 324–27, 908 A.2d 1090 (2006) (agreeing with petitioner's claim that trial court improperly granted motion brought pursuant to Practice Book § 15-8 to dismiss petition to terminate parental rights of respondent parents on ground that petitioner had failed to establish prima facie case).

convincing evidence, that she failed to rehabilitate. We are not persuaded.

We begin by setting forth the following relevant legal principles and standard of review that govern the resolution of this claim. "A hearing on a termination of parental rights petition consists of two phases, adjudication and disposition. . . . In the adjudicatory phase, the court must determine whether the [petitioner] has proven, by clear and convincing evidence, a proper ground for termination of parental rights. . . . In the dispositional phase, once a ground for termination has been proven, the court must determine whether termination is in the best interest of the child. . . .

"Although the trial court's subordinate factual findings are reviewable only for clear error, the court's ultimate conclusion that a ground for termination of parental rights has been proven presents a question of evidentiary sufficiency. . . . That conclusion is drawn from both the court's factual findings and its weighing of the facts in considering whether the statutory ground has been satisfied. . . . On review, we must determine whether the trial court could have reasonably concluded, upon the facts established and the reasonable inferences drawn therefrom, that the cumulative effect of the evidence was sufficient to justify its [ultimate conclusion]. . . . When applying this standard, we construe the evidence in a manner most favorable to sustaining the judgment of the trial court. . . .

"In the adjudicatory phase of a termination of parental rights proceeding, the court must determine whether one of the six statutory grounds that may serve as a basis for the termination of parental rights exists. . . . Failure of a parent to achieve sufficient personal rehabilitation is one of six statutory grounds on which a court may terminate parental rights pursuant to § 17a-112. . . . That ground exists when a parent of a child

whom the court has found to be neglected fails to achieve such a degree of rehabilitation as would encourage the belief that within a reasonable time, considering the age and needs of the child, the parent could assume a responsible position in the life of that child. . . .

"Personal rehabilitation as used in [§ 17a-112 (j) (3) (B) (i)] refers to the restoration of a parent to his or her former constructive and useful role as a parent. . . . The statute does not require [a parent] to prove precisely when [she] will be able to assume a responsible position in [her] child's life. Nor does it require [her] to prove that [she] will be able to assume full responsibility for [her] child, unaided by available support systems. . . . Rather, [§ 17a-112] requires the trial court to analyze the [parent's] rehabilitative status as it relates to the needs of the particular child, and further, that such rehabilitation must be foreseeable within a reasonable time. . . . [The statute] requires the court to find, by clear and convincing evidence, that the level of rehabilitation [the parent] has achieved, if any, falls short of that which would reasonably encourage a belief that at some future date [she] can assume a responsible position in [her] child's life. . . . [I]n assessing rehabilitation, *the critical issue is not whether the parent has improved* [*her*] *ability to manage* [*her*] *own life, but rather whether* [*she*] *has gained the ability to care for the particular needs of the child at issue*. . . .

"Section 17a-112 (j) (3) (B) allows for the termination of parental rights due to a respondent's failure to achieve personal rehabilitation only after the respondent has been issued specific steps to facilitate rehabilitation. Specific steps provide notice . . . to a parent as to what should be done to facilitate reunification and prevent termination of rights. . . . The specific steps are a benchmark by which the court will measure the respondent's conduct to determine whether termination is appropriate pursuant to § 17a-112 (j) (3) (B).

. . . We acknowledge that the court need not base its determination purely on the respondent's compliance with the specific steps . . . . A parent may complete all of the specific steps and still be found to have failed to rehabilitate . . . . Conversely, a parent could fall somewhat short in completing the ordered steps, but still be found to have achieved sufficient progress so as to preclude a termination of his or her rights based on a failure to rehabilitate." (Citations omitted; emphasis in original; internal quotation marks omitted.) *In re Marie J.*, 219 Conn. App. 792, 805–808, 296 A.3d 308 (2023). "[T]he relevant date for considering whether [a respondent] failed to rehabilitate is the date on which the termination of parental rights petition was filed . . . . Although a court *may* rely on events occurring after the date of the filing of the petition to terminate parental rights when considering the issue of whether the degree of rehabilitation is sufficient to foresee that the parent may resume a useful role in the child's life within a reasonable time . . . *it is not required to do so*." (Emphasis in original; internal quotation marks omitted.) *In re Nevaeh G.-M.*, 217 Conn. App. 854, 880, 290 A.3d 867, cert. denied, 346 Conn. 925, 295 A.3d 418 (2023). We emphasize that, on review, we must determine "whether the trial court could have reasonably concluded, upon the facts established and the reasonable inferences drawn therefrom, that *the cumulative effect of the evidence* was sufficient to justify its [ultimate conclusion]." (Emphasis in original.) *In re Anaishaly C.*, 190 Conn. App. 667, 687, 213 A.3d 12, cert. denied, 345 Conn. 914, 283 A.3d 505 (2019).

In its memorandum of decision, the court stated that it considered all of the evidence introduced at trial in reaching its conclusion. On the basis of our careful review of the record, construed in the light most favorable to sustaining the judgment, as we are obligated to

do, we conclude that there is sufficient evidence to support the court's conclusion.

In the present case, the court heard testimony from Franklin, a licensed clinical psychologist who performed three separate court-ordered psychological evaluations. Franklin conducted the first psychological evaluation of the respondent on June 18, 2019 (June 18, 2019 evaluation), which resulted in a written report that was admitted into evidence. In the June 18, 2019 evaluation, Franklin diagnosed the respondent with "[d]epressive disorder, with anxious features"; post-traumatic stress disorder; and "[a]lcohol [u]se [d]isorder, provisional." Franklin opined that "[t]here is no evidence of suicidal ideations at this time. However, [the respondent] does poorly with stress and should be monitored closely. This is important as historically, poor response to psychosocial stressors have resulted in impulsive behaviors and statements." Franklin articulated that the respondent's current diagnosis required that she continue with psychotropic medications. According to Franklin, "[t]his is important because mood stabilizing medications allow her [to] manage the physiological and neurotransmitter components of her depression, ameliorat[e] negative cognitive ideations and impulsive behaviors."

Franklin conducted a second evaluation of the respondent on February 16, 2021 (February 16, 2021 evaluation), which resulted in a written report that also was admitted into evidence. In the February 16, 2021 evaluation, Franklin noted that, although the respondent has shown improvement, "there continues to be evidence of mood dysregulation and anxiety." He noted that "[h]er clinical profile reflects ongoing cognitive ruminations, low self-esteem, and poor concentration. She continues to experience emotional distress . . . [and] to be vulnerable . . . . [The department] reports that she recently started engaging in self-injurious

behaviors due to [Tarik's father's wife] becoming aware of her relationship with [Tarik's father]." (Internal quotation marks omitted.)

In Franklin's third evaluation of the respondent, which he conducted on August 18, 2021 (August 18, 2021 evaluation), and resulted in a written report that was admitted into evidence, he stated that the respondent demonstrated improvement in her mood. He opined, however, that she may still do poorly with external stressors. In the August 18, 2021 evaluation, he diagnosed her with generalized anxiety disorder. He noted that the "current diagnosis represents clinical improvement, likely due [t]o her ongoing therapy and in particular her compliance with psychotropics." Franklin continued to be concerned that [the respondent] may be vulnerable to psychosocial stressors. In the August 18, 2021 evaluation, Franklin concluded that, although the respondent had made progress toward reunification, "full rehabilitation may not have been achieved as she continues to drink alcohol socially, making her a high risk for relapse of other drugs, and she has terminated use of mood stabilizers." In the August 18, 2021 evaluation. Franklin's opinion was that, "as of this report . . . reunification is unlikely to occur in the foreseeable future."

In addition to the written evaluations conducted by Franklin, the court heard testimony from him. Franklin testified that, in his first evaluation of the respondent in 2019, he confirmed that the respondent had issues with depressive disorder and post-traumatic stress disorder. He further testified that her diagnosis required treatment with psychotropic medications. Franklin testified that if the respondent was sufficiently engaged in therapy and was taking psychotropic medication, there was a possibility of beginning the reunification process with Tarik at that time. He further testified that, during his second evaluation of the respondent,

there were some concerns raised regarding the respondent's suicidal ideation and self-mutilating behavior, and that she had stopped taking her medications because she felt that she did not need them. According to Franklin, his concerns during the second evaluation of the respondent were that her issues had not been sufficiently addressed that, because Tarik had been engaging in tantrums, biting, and fighting other people, the respondent could not manage Tarik's behaviors at that time. He testified that, in his opinion, the respondent does poorly with psychosocial stressors and that Tarik's out-of-control behaviors would "push her over the edge." In Franklin's opinion, to send Tarik back to the respondent with his unresolved issues would set the respondent up to fail because she is incapable of managing Tarik's behaviors.

The court further heard testimony from Dr. Jessica Biren Caverly, a licensed psychologist who had performed an evaluation of the respondent at her request. Biren Caverly prepared a written report dated December 17, 2021, which was admitted as an exhibit at trial. In her report, Biren Caverly acknowledged that the respondent "has been engag[ed] in mental health treatment and [that] she is taking her prescribed medication as indicated." However, Biren Caverly opined that the respondent "continues to require mental health treatment and medication management." Biren Caverly recommended that the respondent "continue to engage in mental health and medication management service in order to learn more about parenting strategies and handling interpersonal deficits, as well as to demonstrate stability on her current medication." Ultimately, Biren Caverly recommended that, "[o]nce [the respondent] completed parenting education to the satisfaction of her provider, [the department] should pursue reunification between [her] and Tarik."

The court also heard testimony from Molly Glynn, a family support specialist employed by The Village for Families & Children, who performed a reunification readiness assessment and prepared a written report (reunion readiness report), which was introduced as a full exhibit.[11] The reunion readiness report, which is dated May 19, 2022, indicated that the original safety issues that resulted in Tarik's placement had not been "altered or reduced to a sufficient level whereby control within the family is probable." According to the reunion readiness report, the respondent was not taking her prescribed medications at the time. In that report, Glynn indicated that the respondent reported to her that "she was spiraling and needed support that no one was giving her." In the reunion readiness report, Glynn concluded that, "[a]t this time reunification is not being recommended between [the respondent] and her son . . . due to concerns regarding [the respondent's] compliance with her prescribed mental health treatment, thus preventing the reduction of original safety concerns and reason of removal."

In addition, the court heard evidence that, on May 4, 2022, the respondent was transported by emergency personnel to the emergency department at Manchester Memorial Hospital (hospital) with suicidal ideations. According to a final report prepared by the hospital, which was admitted into evidence, the respondent's therapist called "911 for assistance following a telephone contact with [the respondent] where she had made suicidal statements with a plan to overdose. On the scene she repeated her [earlier statements suggesting suicidal ideations]; she was transported without incident to the [emergency department]." It was noted in the final report that the respondent appeared at the emergency department as uncooperative and hostile.

[11] The intake for the reunion readiness assessment evaluation occurred on March 23, 2022. The evaluation concluded on May 11, 2022.

The report described her as a patient who "quickly escalates her tone and behavior; she has been banging on the wall at several junctures and insisting that she will elope and is not going to be held against 'her fucking will.' She refuses to answer questions regarding her overall situation and mental status; while insisting that she is not a risk to herself and only needs to 'talk to my therapist' she is unable to give a reliable safety promise at this time. Her insight and judgment are poor." She was admitted to the hospital after an emergency psychiatric services assessment.

Viewed in the light most favorable to sustaining the judgment, the evidence sufficiently supports the court's conclusion that there was clear and convincing evidence that the respondent failed to achieve a sufficient degree of rehabilitation necessary to encourage a belief that now, or within a reasonable time, she could assume a responsible position in Tarik's life.

The judgment is affirmed.

In this opinion the other judges concurred.

IN RE PHOENIX M.*
(AC 46328)

Bright, C. J., and Elgo and Eveleigh, Js.

Syllabus

The respondent mother appealed to this court from the judgment of the trial court terminating her parental rights with respect to her minor child. On appeal, she claimed that the court erred in denying her request for new counsel on the first day of the trial, specifically, that the court improperly based its decision on the best interest of the child. *Held* that the trial court did not abuse its discretion when it denied the respondent

* In accordance with the spirit and intent of General Statutes § 46b-142 (b) and Practice Book § 79a-12, the names of the parties involved in this appeal are not disclosed. The records and papers of this case shall be open for inspection only to persons having a proper interest therein and upon order of the court.

mother's request for new counsel: the court properly considered whether the request for new counsel would cause an undue delay in the trial, and the court's consideration of the child's best interest was tied into that concern; moreover, the court considered the issues the mother raised in support of her request for a continuance, including her counsel's performance, her acceptance into a treatment program, her incarceration, and her contact with the child's unidentified father, and expressed its belief that she raised those issues on the first day of trial for the purpose of causing a delay.

Argued September 11—officially released October 3, 2023**

Procedural History

Petition by the Commissioner of Children and Families to terminate the respondents' parental rights with respect to their minor child, brought to the Superior Court in the judicial district of New Britain, Juvenile Matters, and tried to the court, *Daniels, J.*; judgment terminating the respondents' parental rights, from which the respondent mother appealed to this court. *Affirmed.*

Matthew C. Eagan, assigned counsel, for the appellant (respondent mother).

Patrick T. Ring, assistant attorney general, with whom, on the brief, were *William Tong*, attorney general, and *Evan O'Roark*, assistant solicitor general, for the appellee (petitioner).

Lisabeth B. Mindera, for the minor child.

Opinion

EVELEIGH, J. The respondent mother, Chantel A.,[1] appeals from the judgment of the trial court rendered

** October 3, 2023, the date that this decision was released as a slip opinion, is the operative date for all substantive and procedural purposes.

[1] The court also terminated the parental rights of John Doe, the unknown father of the child, on the grounds of abandonment and no ongoing parent-child relationship pursuant to General Statutes § 17a-112 (j) (3) (A) and (D). In light of the fact that John Doe has not appealed from the judgment of the trial court, we refer in this opinion to the respondent mother as the respondent.

in favor of the petitioner, the Commissioner of Children and Families (commissioner), terminating her parental rights with respect to her minor child, Phoenix M.[2] On appeal, the respondent claims that the trial court improperly denied her request for new counsel on the first day of trial. We affirm the judgment of the trial court.

The following facts, as found by the trial court, and procedural history are relevant to our resolution of this appeal. The Department of Children and Families (department) initially became involved with the respondent in 2005, and again in 2013, in relation to her first two children, due to her substance abuse and unresolved mental health issues. The respondent gave birth to Phoenix in March, 2021. At that time, Phoenix tested positive for fentanyl and required treatment for withdrawal.

On April 22, 2021, the petitioner filed an ex parte motion for an order of temporary custody of Phoenix, which was issued, and a neglect petition. On April 30, 2021, the order of temporary custody was sustained. On July 8, 2021, Phoenix was adjudicated neglected and committed to the care and custody of the petitioner. The petitioner subsequently placed Phoenix with fictive kin, the friend of a maternal aunt.

At the time that Phoenix was adjudicated neglected, the court ordered specific steps to facilitate reunification between the respondent and Phoenix, which required the respondent, inter alia, to take part in counseling and make progress toward identified treatment goals, to refrain from the use of illegal drugs and the abuse of alcohol or medicine, to obtain housing and a legal income, to visit Phoenix as often as permitted by

[2] The attorney for the minor child filed a statement adopting the brief of the petitioner.

the department, and to avoid involvement in the criminal justice system. The respondent failed to fully comply with the specific steps ordered by the court. Among other things, she failed to engage in treatment related to her substance abuse and mental health issues, she disclosed to a department social worker that she continued to use fentanyl twice per day, she had been arrested on five different occasions for numerous drug related charges, and she had attended only five supervised visits with Phoenix, during which she appeared to be under the influence of drugs or alcohol. On March 4, 2022, the trial court approved a permanency plan of termination of parental rights and adoption.

On March 29, 2022, the petitioner filed a petition seeking to terminate the parental rights of the respondent as to Phoenix on the ground that, pursuant to General Statutes § 17a-112 (j) (3) (B) (i), the respondent had failed to achieve a sufficient degree of personal rehabilitation that would encourage the belief that, within a reasonable time, considering the age and needs of Phoenix, she could assume a responsible position in the life of Phoenix.

The termination trial began on Monday, September 26, 2022. The respondent, who was incarcerated at that time, appeared by video. Before evidence began, the court, *Daniels*, *J.*, canvassed the respondent pursuant to *In re Yasiel R.*, 317 Conn. 773, 794, 120 A.3d 1188 (2015). When the court inquired whether the respondent had any questions, the respondent asked to whom she should talk "about getting an extension . . . some time, instead of going through this trial right now," because she had been accepted into a treatment program a few days earlier, on the previous Friday. The court told the respondent: "Well, that's something you could've consulted with your lawyer about. I don't think right now we're in a position to continue the trial, which has been scheduled for a while." The respondent stated:

"I did, and he's not doing much of a job for me, so I wanted to fire him."

The court addressed the respondent's court-appointed counsel, Edmond Feinberg, and asked whether the respondent had talked to him about the possibility of moving for a continuance. Feinberg stated: "It sounds like it's been a recent development, Your Honor. I believe [the respondent] mentioned that perhaps, and I want to speak to her because this seems to have happened on Friday, but perhaps her criminal case was somehow resolved and . . . I don't know, perhaps I should talk to her, Your Honor. That'd probably be the best thing before I speculate as to what happened exactly on Friday." The court remarked that any developments regarding services and treatment could be offered into evidence at trial and considered by the court in reaching its decision. The court then provided Feinberg an opportunity to speak with the respondent.

After a brief recess, Feinberg told the court: "I guess the first item I should bring up is . . . my client's desire to have me withdraw as her attorney. She feels that I have not been diligent enough . . . ." The court rejected this request, stating: "[W]e are scheduled to start trial today and this is the first time that this concern is being raised. The court is going to conclude that it would not be in Phoenix's best interest to further delay the proceeding."

The respondent then addressed the court. She stated that she had been telling Feinberg "for a while" that she was working on getting accepted into the program, and she asked how she was "going to be forced to have someone represent me that I'm not comfortable with." The court told the respondent: "[T]he fact that you've been working to get [in] a program does not have anything to do with Attorney Feinberg's performance as a lawyer. As I said earlier, you can introduce all of that

information into evidence . . . to present your defense to the [petitioner's] claim of failure to rehabilitate."

The respondent also questioned how she could present her defense given that she was incarcerated. She explained that this was the reason she had asked for a continuance, but her counsel did not think that such a request would be successful. The court told the respondent that her incarceration did not constitute a legitimate ground for a continuance, and, because the matter already had been delayed several months, they needed to move forward with the trial in accordance with the best interest of the child. The respondent proceeded to tell the court that Phoenix's father had been trying to contact her and that he wanted to help and be involved. The court, noting that the respondent had not previously provided reliable information about the identity of Phoenix's father, stated: "I can't help but think at this point in time, as you're raising all of these issues, it would appear to the court, simply by way of delay."

Feinberg subsequently moved for a continuance to afford the respondent an opportunity to enter the program she had mentioned, reasoning that the program offered treatment options that the prison did not, and that once the respondent entered the program, she could provide more detailed testimony about it. The court denied the motion, explaining in relevant part: "I am going to deny the motion for a continuance as not being in the best interest of the minor child and taking notice of how long this matter has been proceeding, and how long it's been since this trial date was noticed. As I indicated earlier, certainly as part of her defense here, the respondent . . . is able to offer testimony if she chooses to do so about the program and about her knowledge of services that may be available to her as part of the program. But I do think it's incumbent upon us to proceed today at this time."

The evidentiary portion of the trial began, but, while a social worker for the department was testifying, a correctional officer alerted the court that the respondent was experiencing a medical issue.[3] When the officer reported that the respondent was being sent to the hospital for further evaluation, the court continued the trial.

The trial resumed on November 7, 2022. Feinberg continued to appear on behalf of the respondent, and the respondent did not express any dissatisfaction with his representation. Before the evidentiary portion of the trial restarted, Feinberg again moved for a continuance until the respondent could complete the inpatient treatment program at the APT Foundation, which the court denied. The trial proceeded, and Feinberg subsequently presented evidence concerning the respondent's participation in the program through testimony from the director of residential services for the program and testimony from the respondent herself.

On January 18, 2023, the court rendered judgment terminating the respondent's parental rights with respect to Phoenix. The court concluded that the respondent had failed to rehabilitate pursuant to § 17a-112 (j) (3) (B) (i) and that termination of the respondent's parental rights was in the best interest of Phoenix. This appeal followed.

On appeal, the respondent claims that the court abused its discretion in denying her request for new counsel on the first day of trial.[4] Specifically, she argues

[3] The respondent was pregnant at the time and reported that she was experiencing stomach pain.

[4] The respondent also claims that harm should be presumed from the court's decision on the basis of her contention that she had a constitutional right to counsel, or, alternatively, if she has the burden of demonstrating harm, that her counsel's performance contributed to the termination of her parental rights. In light of our conclusion that the court did not improperly deny the respondent's request for new counsel, we do not reach the issue of harm.

that the court improperly based its decision on the best interest of Phoenix. We disagree.

"Although a parent has a statutory right to counsel in a neglect proceeding, [t]here is no unlimited opportunity to obtain alternate counsel." (Internal quotation marks omitted.) *In re Ceana R.*, 177 Conn. App. 758, 775, 172 A.3d 870, cert. denied, 327 Conn. 991, 175 A.3d 1244 (2017). "It is within the trial court's discretion to determine whether a factual basis exists for appointing new counsel. . . . [A]bsent a factual record revealing an abuse of that discretion, the court's failure to allow new counsel is not reversible error. . . . Such a request must be supported by a substantial reason and, [i]n order to work a delay by a last minute discharge of counsel there must exist exceptional circumstances. . . . A request for the appointment of new counsel . . . may not be used to cause delay." (Citation omitted; internal quotation marks omitted.) *In re Isaiah J.*, 140 Conn. App. 626, 633–34, 59 A.3d 892, cert. denied, 308 Conn. 926, 64 A.3d 333, cert. denied sub nom. *Megan J.* v. *Katz*, 571 U.S. 924, 134 S. Ct. 317, 187 L. Ed. 2d 224 (2013).

In the present case, we conclude that the respondent's claim rests on the incorrect premise that the court's decision was "focused entirely" on Phoenix's best interest. It is clear from the entire context of the court's decision that the court's overall focus was whether the respondent's request for new counsel would cause an undue delay, and the court's consideration of Phoenix's best interest was tied into that concern. The court expressed doubt as to the legitimacy of the issues that the respondent had raised regarding her counsel's performance and her other proposed grounds for a continuance—her acceptance into the treatment program, her incarceration, and the contact that she had reportedly received from Phoenix's unidentified father—when it told her: "I can't help but think

at this point in time, as you're raising all of these issues, it would appear to the court, *simply by way of delay*." (Emphasis added.) The court properly could consider whether the respondent's request for new counsel was made for the purpose of causing an undue delay, and the impact of such a delay, in ruling on the respondent's request for new counsel, particularly in light of the fact that the request was made on the first day of trial. See *In re Isaiah J.*, supra, 140 Conn. App. 634 ("[a] request for the appointment of new counsel . . . *may not be used to cause delay*" (emphasis added; internal quotation marks omitted)); see also *In re Ceana R.*, supra, 177 Conn. App. 775 (explaining that "exceptional circumstances" must exist "[i]n order to work a delay by a last minute discharge of counsel" (internal quotation marks omitted)). Accordingly, we conclude that the court did not abuse its discretion when it denied the respondent's request for new counsel.

The judgment is affirmed.

In this opinion the other judges concurred.

STATE OF CONNECTICUT *v.* JAMES S.*
(AC 45243)

Alvord, Cradle and Clark, Js.

Syllabus

Convicted, after a jury trial, of the crime of risk of injury to a child, the defendant appealed to this court. The three year old victim's mother,

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* In accordance with our policy of protecting the privacy interests of the victims of sexual abuse 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.

Moreover, in accordance with federal law; see 18 U.S.C. § 2265 (d) (3) (2018), as amended by the Violence Against Women Act Reauthorization Act of 2022, Pub. L. No. 117-103, § 106, 136 Stat. 49, 851; we decline to identify any person protected or sought to be protected under a protection order, protective order, or a restraining order that was issued or applied for, or others through whom that party's identity may be ascertained.

L, agreed to let the defendant, her half brother, sleep at her apartment after a family birthday party. The following day, L asked the defendant to watch the victim while L dropped off her son at his workplace. When L returned home, the victim told L that the defendant had hurt her and pointed to her vagina. *Held*:

1. The defendant's claim that the evidence was insufficient to convict him of risk of injury to a child was unavailing: the cumulative force of the evidence was sufficient for the jury to find that the defendant touched the victim's intimate parts in a sexual and indecent manner that was likely to impair her health or morals, as the victim testified that the defendant touched her vagina and buttocks with his finger in a way that hurt her and made her cry, L testified that, after she arrived home, the victim appeared afraid, L asked the victim what happened and the victim pointed to her private parts, which she had never done before, L examined the victim and observed that the victim's vagina was shiny, and she later found a jar of Vaseline that previously contained some Vaseline and was now empty, the defendant and the victim were the only people in the apartment after L left, and L had told the defendant he did not have to do anything to care for the victim; in the present case, given these facts, the jury reasonably could have inferred that the defendant put Vaseline on his finger before making contact with the victim's intimate parts and that he was not given any instructions for the victim's care that would have necessitated such contact.
2. The defendant's claim that he had a due process right to a pretrial taint hearing to evaluate whether the victim's statements and testimony were reliable or whether they were coerced and a product of suggestive questioning was unavailing: the defendant did not cite any authority suggesting that a court is obligated to hold such a hearing sua sponte, the cases on which the defendant relied made clear that a due process claim predicated on the purported entitlement to an evidentiary hearing fails in the absence of a request for such a hearing, and, although the defendant relied extensively on the New Jersey Supreme Court's decision in *State* v. *Michaels* (136 N.J. 299), the defendant failed to comply with the very procedure he asked this court to adopt because, in order to show an entitlement to such a hearing in New Jersey, a defendant must request a pretrial hearing before trial and make a showing of "some evidence" that the victim's statements were the product of suggestive or coercive interview techniques; moreover, although the defendant argued that our Supreme Court in *State* v. *Michael H.* (291 Conn. 754) did not foreclose the possibility that due process might require a pretrial taint hearing on a showing of some evidence of suggestiveness or coercion, nothing in *Michael H.* suggested that a defendant's due process rights are violated when a trial court fails to sua sponte hold a pretrial taint hearing, on the contrary, the fact that the defendant in that case asked for such a hearing and our Supreme Court left open the possibility

that one might be required on a proper showing by a defendant underscores the fact that the defendant in the present case had sufficient notice and opportunity, as well as the obligation, to request such a hearing; accordingly, the defendant's claim failed the second and third prongs of *State* v. *Golding* (213 Conn. 233) because he did not establish that the court's failure to hold a hearing sua sponte was constitutional in nature or violated his constitutional rights.

(*One judge concurring*)

3. This court declined the defendant's invitation to use its supervisory authority to require pretrial taint hearings to assess the reliability of complainants in child sexual abuse cases; this court was not persuaded that the present case was a proper occasion to exercise its supervisory authority because it was not convinced that the traditional protections already in place were inadequate to protect the rights of the defendant or the integrity of the judicial system, as the defendant, who never requested a pretrial taint hearing before the trial court, had every opportunity to explore the issue of suggestive or coercive questioning at trial and it was then for the jury, on the basis of its firsthand observation of the witnesses' conduct, demeanor and attitude, to determine the credibility of the witnesses' testimony and the weight to be given such testimony.

Argued April 11—officially released October 10, 2023

Procedural History

Substitute information charging the defendant with the crimes of sexual assault in the first degree, sexual assault in the fourth degree, and risk of injury to a child, brought to the Superior Court in the judicial district of Fairfield and tried to the jury before *Hernandez*, *J.*; verdict and judgment of guilty of risk of injury to a child, from which the defendant appealed to this court. *Affirmed.*

Jennifer B. Smith, assistant public defender, for the appellant (defendant).

Denise B. Smoker, senior assistant state's attorney, with whom, on the brief, were *Joseph T. Corradino*, state's attorney, and *Tatiana A. Messina*, senior assistant state's attorney, for the appellee (state).

Opinion

CLARK, J. The defendant, James S., appeals from the judgment of conviction, rendered after a jury trial, of

risk of injury to a child in violation of General Statutes § 53-21 (a) (2). The defendant claims that (1) the evidence was insufficient to convict him of risk of injury to a child, (2) he "has a due process right to a pretrial taint hearing to evaluate whether the complainant's statements and testimony were reliable or whether they were coerced and a product of suggestive questioning," and (3) if he did not have a right to a pretrial taint hearing, that this court should exercise its supervisory authority to require pretrial taint hearings to assess the reliability of complainants in child sexual abuse cases. We affirm the judgment of the trial court.

The jury reasonably could have found the following facts. On September 21, 2019, the defendant arrived at the apartment of his half sister, L, to attend a birthday party for L's grandfather. At the behest of T, the mother of L and the defendant, L agreed to let the defendant sleep at her apartment that night. The following day, September 22, 2019, L asked the defendant to watch her three year old daughter, R, the complainant in this case, while L left the apartment to drop her youngest son off at his workplace. Before leaving, L told the defendant that he did not have to do anything to take care of R, other than remind her to finish eating her food. L left to bring her son to work and stopped at a Family Dollar store on her way home. She was away from the apartment for approximately twenty to twenty-five minutes, during which time the defendant and R were the only individuals in the apartment. When L returned home, she noticed that R "looked frightened . . . it was a look [L had] never seen [R] have . . . before . . . ." L gave the defendant some money and told him to buy cigarettes at a nearby convenience store, which gave L an opportunity to speak with R alone. The defendant then left the apartment, at which point L asked R what was wrong. R told L that the defendant had hurt her and pointed to her vagina (incident).

When the defendant returned from the store, L struck him, "[trying her] best to hurt him" before throwing him out of the apartment. L then called T and told her to "come get [the defendant]. [L] said [to T that she] think[s] [the defendant] touched [R]." After L got off the phone with T, she inspected R and discovered that "[R's vagina] was shiny. It was red, and it was open a little bit more than [she had] ever seen it." At some point after the incident, L discovered that a jar of Vaseline that she kept in a drawer in her kitchen, which previously contained some Vaseline, was now empty.[1]

When T arrived at the apartment, the defendant was sitting on the stoop in front of L's apartment building. T asked L if she could go inside the apartment to see R. L then accompanied T to R's room, where T asked R what had happened. R said that the defendant hurt her "here and . . . here," gesturing to her vagina and buttocks. Afterward, T left the apartment and took the defendant home with her.

On September 24, 2019, two days after the incident, L called the police.[2] Thereafter, Officer Davon Polite arrived at L's apartment, where he spoke with L to gather information about the incident. L identified the defendant as the individual who touched R, but Polite never spoke with R directly.[3] After his conversation with L, Polite called dispatch to request an ambulance and informed his sergeant of the incident, after which time the investigation was referred to the domestic violence unit of the police department.

[1] It is unclear exactly how soon after the incident L discovered the empty Vaseline jar, but L testified that it was not on the day of the incident and that "[i]t had to be like three days [later] . . . ."

[2] L testified that she did not call the police right away because she "was in shock." In the two days following the alleged incident, L "was going back and forth with [the defendant]. [They] were going back and forth on the phone, on text messages, and calls" about the alleged incident.

[3] At trial, Polite testified that it was the protocol for an investigating officer to refrain from speaking with a child complainant in a sexual assault case.

An ambulance transported L and R to Bridgeport Hospital, where they met with Adam Paquin, a clinical social worker. Before meeting with R, Paquin spoke with L in the hallway outside of R's treatment room. L disclosed to Paquin that R had told L "that [the defendant] hurt her," and then repeated the gesture R had shown L.

Paquin spoke with the attending physician and assigned nurse and then met with R in the treatment room.[4] Paquin found that R's verbal skills were limited, and that she "responded yes and no to contradicting questions." When Paquin began asking R questions about the defendant, R "reported that she likes [the defendant] and has fun playing with him. [Paquin then] explored if [the defendant] ever hurt her, and she replied no. During the conversation, [R] . . . [pointed] to her vagina and said 'finger.' [When Paquin] explored this, [R] stated that [the defendant] touched her." The attending physician noted "[v]aginal pain" as a physical indicator of sexual abuse but identified no other signs of injury. Upon discharge, Paquin referred R to the Center for Family Justice for a forensic interview.

On October 4, 2019, R presented at the Center for Family Justice for a forensic interview.[5] During the interview, which was approximately thirteen minutes long, R stated that she was touched in a way that hurt her, but did not specify where, nor did she specifically accuse the defendant. Later in the interview, R stated that "Justice hurt [her]."[6] The forensic interviewer, hav-

[4] Paquin noted that, in child sexual abuse cases, members of the multidisciplinary team—in this case consisting of a social worker, a physician, and a nurse—typically meet with the patient at the same time "so that the child does not have to keep giving the story multiple times."

[5] A video recording of the forensic interview was admitted as an exhibit at trial.

[6] Justice, R's eldest brother, was approximately nineteen years old around the time of the incident and would regularly babysit R while L was at work. We further note that R referred to the defendant as "Jimmy" or "Uncle Jimmy."

ing trouble understanding R, did not ask any further clarifying questions.[7]

On October 21, 2019, R was evaluated by Beth A. Moller, an advanced practice registered nurse, at the Family Advocacy Center at Yale New Haven Hospital. Before Moller began evaluating R, she spoke with L, who reported that R had been waking up with nightmares since the incident. During Moller's discussion with R, Moller "asked [R] if she had any worries about her body and she said her belly. [Moller] asked why she had a worry about her belly and [R] said 'because [the defendant] hurts [her].' Then she said 'I cry.' [Moller] asked [R] why she cried and she said '[because the defendant] hurt [her].' Then [R] pointed to her vagina and to her buttocks and said '[r]ight there . . . and right there . . . [the defendant] put one finger (pointing with one finger) in there (again pointing to the vagina) and in there' (pointing to her buttocks). [Moller] asked if [the defendant] did that one time or more than one time. [R] said 'more than one time.' "[8] Next, Moller conducted a physical exam of R and found that R's external genitalia and anus were normal, without any signs of vaginal discharge, lesions, blood, trauma, injury, or redness.[9]

The defendant thereafter was charged with sexual assault in the first degree in violation of General Statutes § 53a-70 (a) (2),[10] sexual assault in the fourth degree

[7] It is undisputed between the parties that the forensic interviewer had difficulty understanding R. Defense counsel conceded as much during closing argument.

[8] At trial, R did not testify about any additional incidents other than the one already described as taking place on September 22, 2019, and the state has made clear that it only alleges one instance of sexual contact.

[9] Moller testified that the examination of R revealed "normal genitalia and anus. A normal exam neither confirms nor refutes the possibility of sexual abuse. Most children or teens who have experienced sexual abuse, including those who have experienced penetration, will have a normal exam."

[10] General Statutes § 53a-70 (a) provides in relevant part: "A person is guilty of sexual assault in the first degree when such person . . . (2) engages in sexual intercourse with another person and such other person is under

in violation of General Statutes § 53a-73a (a) (1) (A),[11] and risk of injury to a child in violation of § 53-21 (a) (2).[12] A jury trial was held over four days in September, 2021. On September 30, 2021, the jury returned its verdict of not guilty of sexual assault in the first degree, not guilty of the lesser included offense of attempt to commit sexual assault in the first degree, not guilty of sexual assault in the fourth degree, and guilty of risk of injury to a child. On November 30, 2021, the court, *Hernandez, J.*, sentenced the defendant to a term of imprisonment of fifteen years, execution suspended after five years, and ten years of probation. This appeal followed. Additional facts and procedural history will be set forth as necessary.

I

The defendant first claims that the evidence at trial was insufficient to convict him of risk of injury to a child. Specifically, he argues that the state failed to prove that the defendant touched R's intimate parts in a sexual and indecent manner that was likely to impair her health or morals. We disagree.

"We begin our analysis by setting forth the well established legal principles for assessing an insufficiency of the evidence claim. 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

thirteen years of age and the actor is more than two years older than such person . . . ."

[11] General Statutes § 53a-73a (a) provides in relevant part: "A person is guilty of sexual assault in the fourth degree when: (1) Such person subjects another person to sexual contact who is (A) under thirteen years of age and the actor is more than two years older than such other person . . . ."

[12] The state filed a long form information on June 15, 2020, which amended the charges against the defendant to sexual assault in the first degree and risk of injury to a child, omitting the charge of sexual assault in the fourth degree. The operative charging document at trial, however, a substitute long form information filed on September 10, 2021, charged the defendant with the same offenses as the original information.

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. . . . In particular, before this court may overturn a jury verdict for insufficient evidence, it must conclude that no reasonable jury could arrive at the conclusion the jury did." (Citation omitted; internal quotation marks omitted.) *State* v. *Charles L.*, 217 Conn. App. 380, 386, 288 A.3d 664, cert. denied, 346 Conn. 920, 291 A.3d 607 (2023). "While the jury must find every element proven beyond a reasonable doubt in order to find the defendant guilty of the charged offense, 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." (Internal quotation marks omitted.) *State* v. *Stephen J. R.*, 309 Conn. 586, 593–94, 72 A.3d 379 (2013). "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 [fact finder's] verdict of guilty." (Internal quotation marks omitted.) *State* v. *Michael R.*, 346 Conn. 432, 480, 291 A.3d 567 (2023), petition for cert. filed (U.S. July 12, 2023) (No. 23-5087).

Section 53-21 (a) (2) provides in relevant part that any person who "has contact with the intimate parts[13]

[13] General Statutes § 53a-65 (8) defines intimate parts as "the genital area or any substance emitted therefrom, groin, anus or any substance emitted therefrom, inner thighs, buttocks or breasts."

. . . of a child under the age of sixteen years . . . in a sexual and indecent manner likely to impair the health or morals of such child . . . shall be guilty of . . . a class B felony . . . except that, if the violation is of subdivision (2) of this subsection and the victim of the offense is under thirteen years of age, such person shall be sentenced to a term of imprisonment of which five years of the sentence imposed may not be suspended or reduced by the court." (Footnote added.) The defendant concedes that the jury reasonably could have found that he had contact with R's intimate parts. He claims, however, that the state failed to introduce evidence that demonstrates that the contact was made in a sexual and indecent manner that was likely to impair R's health or morals.

"[A] defendant may not be convicted under § 53-21 (a) (2) unless the state proves that the contact was made in a sexual and indecent manner likely to impair the health or morals of such child . . . ." (Internal quotation marks omitted.) *State* v. *Alvaro F.*, 291 Conn. 1, 10–11, 966 A.2d 712, cert. denied, 558 U.S. 882, 130 S. Ct. 200, 175 L. Ed. 2d 140 (2009); see *State* v. *Abreu*, 141 Conn. App. 1, 8–9, 60 A.3d 312 (affirming conviction where trial court instructed jury that "[s]exual means having to do with sex, and indecent means offensive to good taste or public morals" (internal quotation marks omitted)), cert. denied, 308 Conn. 935, 66 A.3d 498 (2013); see also *State* v. *Zwirn*, 210 Conn. 582, 588, 556 A.2d 588 (1989) ("[w]ithout the requirement that the act be done in a sexual and indecent manner, there would be no legal distinction between touching a child's private parts in an innocent manner, e.g., for necessary medicinal or hygienic purposes, and touching a child's private parts in a manner that violates the statute").

The defendant argues that, unlike cases in which "the contact with the victims' intimate parts was indisputably sexual and indecent based on details about what

was done, how it was done, and the surrounding circumstances," the state did not present any physical evidence of sexual abuse or eyewitness accounts other than R's testimony. Further, the defendant argues that R's testimony is insufficient because it "did not contain any context or details that would allow the jury to infer that the touching was done in a sexual and indecent manner . . . ."

Although a child victim's testimony can be sufficient to sustain a conviction; see, e.g., *State* v. *Stephen J. R.*, supra, 309 Conn. 598–600; our review does not begin and end with the sufficiency of the complainant's testimony but, rather, extends to the " 'cumulative force of the evidence . . . .' " *State* v. *Charles L.*, supra, 217 Conn. App. 386. On the basis of our review of the record in this case, we conclude that the cumulative force of the evidence was sufficient for the jury to find that the defendant's contact with R's intimate parts was done in a sexual and indecent manner that was likely to impair her health or morals. R testified that, in the kitchen of L's apartment, the defendant touched her vagina and buttocks[14] with his finger in a way that hurt and made her cry. In addition to R's testimony, L testified that, after arriving home on the day in question and seeing "fear all over [R]," L asked R what had happened, and, in response, R pointed to her private parts, which she had never done before. L further testified that, after throwing the defendant out of her apartment, she proceeded to examine her daughter. She observed that R's vagina "was shiny. It was red, and it was open a little bit more than [she had] ever seen it." L further testified that she later found the jar of Vaseline that she kept in a drawer in her kitchen, which previously contained some Vaseline, was now empty. She

[14] Specifically, R identified the defendant in the courtroom and testified that he hurt her "[b]utt" with his finger. When asked to stand up and point to the parts of her body she referred to as her "butt," she pointed to both her vagina and buttocks.

testified that when she discovered the jar of Vaseline, that is when she "tried to put two and two together" as to why R's vagina was shiny.[15] The testimony at trial also showed that the defendant and R were the only people in the apartment after L left, and that L had told the defendant that he did not have to do anything to take care of R. She told him that the "most you might have to do is just tell her to eat her food, because when she's watching TV or watching her show on the phone, she's distracted, so she'll stop eating or forget . . . ." Given these facts, the jury reasonably could have drawn the inference that the defendant put Vaseline on his finger before making contact with R's intimate parts, and that he was not given any instructions for R's care that would necessitate such contact. This evidence is sufficient to support a finding that the defendant had contact with R's intimate parts in a sexual and indecent manner that was likely to impair her health or morals.

Although the defendant advances several arguments about the inconsistencies in R's testimony and the unreliability of L's testimony, it is not for this court to reweigh the evidence. See *State* v. *DeMarco*, 311 Conn. 510, 519–20, 88 A.3d 491 (2014) ("Notwithstanding our responsibility to examine the record scrupulously, it is well established that we may not substitute our judgment for that of the [jury] when it comes to evaluating the credibility of a witness. . . . It is the exclusive province of the trier of fact to weigh conflicting testimony and make determinations of credibility, crediting some, all or none of any given witness' testimony. . . .

[15] L testified as follows: "When I tell you that Vaseline jar was clean, I mean nothing was in there. But the last time I [saw] it, it [had] stuff . . . in the insides . . . . There was stuff in there. But when I came across that Vaseline jar again, it was totally clean, rubbed all the way out. And, then that's when . . . I tried to put two and two together . . . because I didn't know why . . . [R's] vagina was shiny . . . . I just know that she had been tampered with. I didn't know what was used . . . I just know it was shiny."

Questions of whether to believe or to disbelieve a competent witness are beyond our review." (Internal quotation marks omitted.)) Instead, our standard of review requires us to "construe the evidence in the light most favorable to sustaining the verdict." (Internal quotation marks omitted.) *State* v. *Charles L.*, supra, 217 Conn. App. 386.

On the basis of the foregoing, we conclude that the evidence introduced at trial was sufficient such that the jury reasonably could have found that the defendant had contact with R's intimate parts in a sexual and indecent manner that was likely to impair her health or morals. Accordingly, the evidence was sufficient to convict the defendant of risk of injury to a child in violation of § 53-21 (a) (2).

II

The defendant next claims that he "has a federal and state constitutional due process right to a pretrial taint hearing to determine whether three year old R's out-of-court statements and subsequent testimony were reliable or whether they were corrupted by coercive and suggestive questioning by her mother and health-care providers." Although the defendant acknowledges that Connecticut has not heretofore recognized a state or federal constitutional due process right to a pretrial taint hearing, he nonetheless urges this court to adopt the procedure set forth by the New Jersey Supreme Court in *State* v. *Michaels*, 136 N.J. 299, 642 A.2d 1372 (1994), which held that a defendant in a sexual abuse case involving a child has a federal due process right to a pretrial taint hearing if he or she makes a showing of " 'some evidence' " that the victim's statements were the product of suggestive or coercive interview techniques. Id., 320.

The defendant concedes that he did not request a pretrial taint hearing before the trial court or otherwise

raise the due process arguments he now advances on appeal. Consequently, he is, in effect, asking this court to conclude that (1) the trial court in this case had a duty to hold a pretrial taint hearing sua sponte before his trial began despite the court not knowing what testimony the state would actually introduce, and (2) because the court failed to hold such a hearing, his due process rights were violated. Recognizing that his claim is unpreserved, the defendant contends that he has satisfied all four prongs of *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), which warrants reversal of his conviction and a remand to the trial court for a pretrial taint hearing before a new trial is held. Under *Golding*, "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." (Emphasis in original; footnote omitted.) *State* v. *Golding*, supra, 239–40; see also *In re Yasiel R.*, supra, 781 (modifying third prong of *Golding*). The defendant argues, in the alternative, that this court should "exercise its supervisory authority and require taint hearings to assess the reliability of child sexual abuse complaints modeling New Jersey's procedure in *Michaels*." We are not persuaded by the defendant's arguments.

We begin with an examination of the principal authorities on which the defendant relies. In *State* v. *Michaels*, supra, 136 N.J. 316, the New Jersey Supreme Court

affirmed the Appellate Division's reversal of the defendant's convictions of thirty-eight counts of aggravated sexual assault, thirty-one counts of sexual assault, forty-four counts of endangering the welfare of children, and two counts of terroristic threats, on the grounds that the interviews of the child victims in that case "were highly improper and employed coercive and unduly suggestive methods" and that there was "a substantial likelihood . . . that the children's recollection of past events was both stimulated and materially influenced by that course of questioning." Id., 306, 315. The court explained that the record was "replete with instances in which children were asked blatantly leading questions that furnished information the children themselves had not mentioned" and subjected them to "repeated, almost incessant, interrogation." Id., 314–15. The record also disclosed the "use of mild threats, cajoling, and bribing"; vilification of the defendant; encouragement that the children "keep [the defendant] in jail"; and provided the cooperative children with replica police badges. Id., 315. Indeed, the court observed that "[p]ositive reinforcement was given when children made inculpatory statements, whereas negative reinforcement was expressed when children denied being abused or made exculpatory statements." Id.

In reversing the defendant's conviction on the basis that the pretrial interviews of the children were highly improper and employed coercive and unduly suggestive methods, the court in *Michaels* ordered that, in the event the state retried the case, a pretrial taint hearing was required to determine whether those clearly improper interrogations so infected the ability of the children to recall the alleged abusive events that their pretrial statements and in-court testimony based on their recollection were unreliable and should not be admitted into evidence. Id., 315–16. The court acknowledged that requiring a pretrial taint hearing was a

"somewhat extraordinary step," but nevertheless concluded that due process required such a procedure in order to cleanse a potential prosecution from the corrupting effects of tainted evidence. Id., 316.

The court then went on to provide parameters for when a pretrial taint hearing would be necessary in future cases. Id., 320. The court made clear that "the initial burden to trigger a pretrial taint hearing is on the defendant" by making a showing of " 'some evidence' " that the victim's statements had been the product of suggestive or coercive interview techniques. Id. The court explained that "the absence of spontaneous recall, interviewer bias, repeated leading questions, multiple interviews, incessant questioning, vilification of defendant, ongoing contact with peers and references to their statements, and the use of threats, bribes and cajoling, as well as the failure to videotape or otherwise document the initial interview sessions," may serve as grounds to trigger a taint hearing. Id., 321. Under the framework adopted by the court, once a defendant establishes that sufficient evidence of unreliability exists, the burden then shifts to the state to prove the reliability of the proffered statements and testimony by clear and convincing evidence. Id. "[T]he ultimate determination to be made is whether, despite the presence of some suggestive or coercive interview techniques, when considering the totality of the circumstances surrounding the interviews, the statements or testimony retain a degree of reliability sufficient to outweigh the effects of the improper interview techniques." Id. The court reiterated that "the focus of the pretrial hearing is on the coercive and suggesting propensity of the investigative questioning of each child and whether that questioning, examined in light of all relevant circumstances, gives rise to the substantial likelihood that the child's recollection of actual events has been irremediably distorted and the statements and the testimony

concerning those events are unreliable." Id., 322. Under the approach adopted in *Michaels*, if the trial court finds at the conclusion of the taint hearing that the testimony is reliable, the parties may address the issue of suggestibility at trial by utilizing the same evidence that was presented at the hearing. Id., 323–24.

Approximately fifteen years after *Michaels* was decided, our Supreme Court was presented with a *Michaels* type claim in *State* v. *Michael H.*, 291 Conn. 754, 755–56, 970 A.2d 113 (2009). The defendant in *Michael H.* claimed that the trial court improperly deprived him of his right to a fair trial when it denied his motion for a pretrial taint hearing. Id., 763. Like the defendant in the present case, the defendant in *Michael H.* acknowledged that Connecticut had not recognized a due process right to a pretrial taint hearing, but he nevertheless urged our Supreme Court to adopt the procedural requirements set forth in *Michaels*. Id. He claimed that a taint hearing was required to evaluate whether the testimony of the four year old victim in that case was reliable or whether the victim's testimony had been corrupted as a result of suggestive and coercive questioning of the child by his mother and a social worker with the Department of Children and Families. Id., 756–57, 763.

Our Supreme Court observed that "[c]hild abuse is one of the most difficult crimes to detect and prosecute, in large part because there often are no witnesses except the victim. . . . In order to discover child abuse, investigators often rely on forensic interviews because children's free recall memory tends to be sparse and often omits important details. . . . This is particularly true for young children in which case fear, embarrassment or loyalty may inhibit them from disclosing instances of abuse. . . . Some research, therefore, has shown that interviews employing directed and leading questions can be useful in securing information

regarding abuse. . . . At the same time, [the court] recognize[d] that [b]ecause [y]oung children are sensitive to the status and power of their interviewers and as a result are especially likely to comply with the implicit and explicit agenda of such interviewers . . . [c]hildren . . . are more willing to go along with the wishes of adults and to incorporate adults' beliefs into their reports. . . . A critical finding of psychological research is that young children, particularly preschool age children, appear to be more suggestible as a basic psychological characteristic than older children and adults." (Citations omitted; internal quotation marks omitted.) Id., 764.

The court also observed that other jurisdictions have received the New Jersey Supreme Court's decision in "*Michaels* with mixed results." Id., 765. According to the court, the "majority of jurisdictions have rejected the *Michaels* approach on the ground that existing procedures that address the competency and credibility of witnesses are adequate to deal with concerns regarding child testimony." Id. Even the minority of jurisdictions that have responded more favorably to the *Michaels* rationale have still "rejected the idea of a separate pretrial taint hearing and, instead, have permitted an inquiry into suggestiveness through the use of competency hearings." Id., 766.

The court further observed that, "[i]n Connecticut, strong policies exist to encourage and protect child testimony." Id.; see also General Statutes § 54-86h. At the same time, the court also acknowledged that the trial court plays an important gatekeeping function with respect to the exclusion or admission of potentially unreliable evidence. *State* v. *Michael H.*, supra, 767. In the end, however, our Supreme Court ultimately determined that it did not need to decide whether some form of pretrial hearing was required in that case to determine the reliability of the child's testimony

"because the defendant [had] failed to make any showing that such testimony was the product of unduly coercive or suggestive questioning." Id., 767–68. As a result, it "[left] for another day the question of whether a pretrial hearing is required to ensure a defendant his right to a fair trial in the event of a showing that a child witness' testimony was the product of coercive or suggestive questioning, and if so, in what context such a hearing would be appropriate, keeping in mind [its] concerns over the well-being of the child and the potential for abuse with such a procedure." Id., 768 n.10.

On appeal, the defendant claims that a pretrial taint hearing was required in his case under the due process clauses of the state and federal constitutions to evaluate whether R's out-of-court statements and testimony were reliable or the product of coercion and suggestion. The state counters that, because the defendant failed to ask the trial court for a pretrial taint hearing, his *Golding* claim fails. Specifically, the state argues that "nothing in the jurisprudence cited by the defendant requires a trial court to hold a pretrial taint hearing *sua sponte*, and despite putting a constitutional tag on his claim, he has failed to meet the 'crucial, critical [and] highly significant' test that would elevate his evidentiary claim challenging the admission of R's testimony and out-of-court statements into a constitutional one." (Emphasis in original.) We agree with the state.

Our Supreme Court's decision in *State* v. *Turner*, 334 Conn. 660, 224 A.3d 129 (2020), is instructive. In *Turner*, the defendant claimed that his conviction should have been overturned under *Golding* because his due process rights were violated when the trial court improperly failed to sua sponte conduct a hearing pursuant to *State* v. *Porter*, 241 Conn. 57, 698 A.2d 739 (1997), cert. denied, 523 U.S. 1058, 118 S. Ct. 1384, 140 L. Ed. 2d 645

(1998),[16] before admitting expert testimony regarding cell phone data and corresponding cell tower coverage maps. *State* v. *Turner*, supra, 662. The defendant argued, inter alia, that the trial court's improper admission of the cell tower coverage maps without first holding a *Porter* hearing violated his due process right to a fair trial because the maps were crucial to the state's case. Id., 675. The state argued that a defendant has no due process right to a *Porter* hearing in the absence of a request for one and the trial court, therefore, was not required to have conducted such a hearing sua sponte. Id., 676. Accordingly, the state contended that the defendant's claim failed under the second and third prongs of *Golding*. Id.

Our Supreme Court explained that, "[u]nder the second prong of *Golding*, an unpreserved evidentiary error generally is not reviewable. . . . Because the admissibility of expert testimony is a matter of state evidentiary law . . . in the absence of timely objection, [it] does not warrant appellate review under [*Golding*] . . . because it does not, per se, raise a question of constitutional significance. . . . Thus, an unpreserved claim that the trial court improperly failed to conduct a *Porter* hearing, which involves the admissibility of expert testimony, generally is not reviewable." (Citations omitted; internal quotation marks omitted.) Id. 673–74.

The court nevertheless recognized "that an unpreserved evidentiary claim may be constitutional in nature if there is a resultant denial of fundamental fairness or the denial of a specific constitutional right . . . . [T]he standard . . . [is] whether the erroneously admitted evidence, viewed objectively in light of the entire record

[16] "[T]he fundamental purpose of a *Porter* hearing is . . . namely, to ensure, first, that the proffered scientific evidence is predicated on reliable scientific methods and procedures, and, second, that the evidence is relevant to the facts of the case." *State* v. *Griffin*, 273 Conn. 266, 281, 869 A.2d 640 (2005).

before the jury, was sufficiently material to provide the basis for conviction or to remove a reasonable doubt that would have existed on the record without it. In short it must have been crucial, critical, [and] highly significant . . . ." (Citations omitted; internal quotation marks omitted.) Id., 674.

With those guiding principles in mind, our Supreme Court ultimately agreed with the state. Id., 676. It made clear that nothing in *State* v. *Edwards*, 325 Conn. 97, 156 A.3d 506 (2017), which it recently had decided and upon which the defendant in *Turner* had relied, required a trial court to conduct a *Porter* hearing sua sponte in the absence of a request for one. *State* v. *Turner*, supra, 334 Conn. 676–78. On the contrary, our Supreme Court explained that "a court is obligated to conduct a *Porter* hearing only when a party requests one." Id., 678. It observed that " '[it] never [has] held that a trial court has an independent obligation to order, sua sponte, a hearing on an evidentiary matter, in the absence of both a request for a hearing and an adequate offer of proof . . . .' " Id., quoting *State* v. *Sullivan*, 244 Conn. 640, 651 n.14, 712 A.2d 919 (1998).

We discern no material difference between the circumstances presented in *Turner* and the one before us. Here, like in *Turner*, the defendant claims that, despite his failure to request a pretrial taint hearing, the trial court's failure to hold such a hearing sua sponte violated his due process rights. Regardless of whether or not the state or federal constitutions require a pretrial taint hearing upon a defendant's request and some showing that a child's testimony may have been the product of improper questioning or interview techniques, a question we need not decide today, the defendant has not pointed us to any authority suggesting that a court is obligated to hold such a hearing sua sponte.[17]

[17] Although the defendant undertakes an analysis under *State* v. *Geisler*, 222 Conn. 672, 684–86, 610 A.2d 1225 (1992) in advancing his argument that the Connecticut constitution requires pretrial taint hearings to screen the

The absence of any such authority should come as no surprise, as a contrary view would require trial courts to be clairvoyant. A court would need to know the substance of the testimony the state planned to introduce as well as the pretrial interview techniques that the state employed before the state even introduced a child victim's testimony at trial.

Moreover, the defendant's claim cannot be reconciled with *Turner* or the other cases to which the defendant has directed us. The cases on which the defendant primarily relies make clear that a due process claim predicated on the purported entitlement to an evidentiary hearing fails in the absence of a request for such a hearing. Although he relies extensively on the New Jersey Supreme Court's decision in *Michaels*, the defendant fails to recognize that he has not complied with the very procedure he asks us to adopt. The court in *Michaels* held that "the initial burden to trigger a pretrial taint hearing is on *the defendant*." (Emphasis added.) *State* v. *Michaels*, supra, 136 N.J. 320. In order to show

reliability of child sexual abuse complainants' out-of-court statements and testimony, he includes no analysis or discussion of whether our state constitution requires a court to hold such a hearing sua sponte. See, e.g., *State* v. *Stephen O.*, 106 Conn. App. 717, 727–28, 943 A.2d 477 ("[T]he defendant claims that the court improperly failed to conduct, sua sponte, a hearing to evaluate the victim's competency. The defendant does not cite any relevant authority in support of his novel assertion that such a duty exists. . . . Even if the court had ruled on the issue of the victim's competency to testify at trial, such a ruling is evidentiary in nature and, thus, not amenable to review under *Golding*. . . . [T]here is no support in law for the defendant's assertion that *any* constitution imposed a duty on the court sua sponte to inquire into the victim's competency." (Citations omitted; emphasis added; internal quotation marks omitted.)), cert. denied, 287 Conn. 916, 951 A.2d 568 (2008).

The defendant also fails to address the impact, if any, that § 54-86h has on this case. General Statutes § 54-86h provides: "No witness shall be automatically adjudged incompetent to testify because of age and any child who is a victim of assault, sexual assault or abuse shall be competent to testify without prior qualification. The weight to be given the evidence and the credibility of the witness shall be for the determination of the trier of fact."

an entitlement to such a hearing in New Jersey, a defendant must request a pretrial hearing *before the trial begins* and "make a showing of 'some evidence' that the victim's statements were the product of suggestive or coercive interview techniques." Id., 320–21; see also, e.g., *State* v. *T.R.K.*, Docket No. A-1650-20, 2023 WL 4480572, *7 (N.J. Super. App. Div. July 12, 2023) ("[i]n support of his *Michaels motion*, [the] defendant requested to introduce expert testimony" (emphasis added)); *State* v. *J.M.S.*, Docket No. A-2106-10T4, 2017 WL 84249, *2 (N.J. Super. App. Div. January 3, 2017) ("the court heard argument on [the] defendant's *Michaels motion* to exclude the two out-of-court recordings" (emphasis added)); *State* v. *Krivacska*, 341 N.J. Super. 1, 24, 775 A.2d 6 (App. Div.) ("[t]he trial judge issued a letter opinion denying [the] *defendant's motion* to bar [children] from testifying based upon the interview techniques employed" (emphasis added)), cert. denied, 170 N.J. 206, 785 A.2d 435 (2001), cert. denied, 535 U.S. 1012, 122 S. Ct. 1594, 152 L. Ed. 2d 510 (2002).

Furthermore, although the defendant notes that our Supreme Court in *Michael H.* did not foreclose the possibility that due process might require a pretrial taint hearing upon a showing of some evidence of suggestiveness or coercion, the defendant in *Michael H.* actually moved for a pretrial taint hearing for the purpose of precluding the testimony of two young children on the ground that their testimony was unreliable due to improper pretrial questioning. *State* v. *Michael H.*, supra, 291 Conn. 757. Nothing in *Michael H.* suggests that a defendant's due process rights are violated when a trial court fails to sua sponte hold a pretrial taint hearing. On the contrary, the fact that the defendant in that case asked for such a hearing and our Supreme Court left open the possibility that one might be required upon a proper showing by a defendant; see

id., 767–68; underscores the fact that the defendant in the present case had sufficient notice and opportunity, as well as the obligation, to request such a hearing. Accordingly, we conclude that the defendant's claim fails *Golding*'s second and third prongs because he has not established that the trial court's failure to hold a hearing sua sponte was constitutional in nature or violated his constitutional rights.[18]

[18] In an apparent effort to overcome the fact that he did not request a pretrial taint hearing in the trial court, the defendant shifts his claim in his reply brief, arguing that the state mischaracterized his claim by arguing that he was claiming that the trial court's failure to hold a pretrial hearing sua sponte violated his due process rights. He argues that he is not claiming that the trial court had a sua sponte duty to conduct this hearing but, rather, that the record is adequate to show that R's testimony and statements were unreliable and that reversal is, therefore, warranted. Although the function of an appellant's reply brief is to respond to the arguments and authority presented in the appellee's brief, that function does not include raising an entirely new (or reformulated) claim of error. See, e.g., *State* v. *Thompson*, 98 Conn. App. 245, 248, 907 A.2d 1257, cert. denied, 280 Conn. 946, 912 A.2d 482 (2006). We interpret the defendant's claim in his principal brief the same way as the state. In making a broad claim that the defendant was entitled to a pretrial taint hearing, the defendant's argument presupposes that he was denied the opportunity to have such a hearing. Moreover, because it is undisputed that he never asked for a pretrial taint hearing, he could only have been denied that purported right if the court failed sua sponte to hold the hearing.

Notwithstanding the foregoing, even if we were to address the defendant's reformulated due process argument, it would require little discussion. It is manifest from the record before us that the identified questioning was not so unduly coercive or extreme as to grievously undermine the reliability of R's statements that their admission into evidence subverted the fairness of the defendant's trial. See, e.g., *State* v. *Michael H.*, supra, 291 Conn. 767. Although the defendant argues that the influences on R's testimony are similar to the techniques that the New Jersey Supreme Court concluded were improper in *Michaels*, most of the defendant's contentions are not supported by the record or simply are not indicative of suggestiveness or coerciveness. In other words, the defendant has not demonstrated that this case is one of the highly unusual cases, like *Michaels*, in which the child's statements were so inherently unreliable that they must be kept from the jury. See, e.g., *State* v. *Carrion*, 313 Conn. 823, 840, 100 A.3d 361, 372 (2014) ("[a]lthough some aspects of [the forensic interviewer's] questioning of [the child victim] may have been unnecessarily or unduly suggestive, we agree with the Appellate Court that the trial court reasonably concluded that any shortcomings in the manner in which the interview was conducted did not render [the child victim's] responses so unreliable that their admission into evidence subverted the fairness of the defendant's trial").

III

The defendant next invites this court to exercise its supervisory authority to require pretrial taint hearings to assess the reliability of complainants in child sexual abuse cases.[19] We decline his invitation.

"Supervisory authority is an extraordinary remedy that should be used sparingly . . . . Although [a]ppellate courts possess an inherent supervisory authority over the administration of justice . . . [that] authority . . . is not a form of free-floating justice, untethered to legal principle . . . . Our supervisory powers are not a last bastion of hope for every untenable appeal. They are an extraordinary remedy to be invoked only when circumstances are such that the issue at hand, while not rising to the level of a constitutional violation, is nonetheless of utmost seriousness, not only for the integrity of a particular trial but also for the perceived fairness of the judicial system as a whole . . . . Constitutional, statutory and procedural limitations are generally adequate to protect the rights of the [litigant] and the integrity of the judicial system. Our supervisory powers are invoked only in the rare circumstance [in which] these traditional protections are inadequate to ensure the fair and just administration of the courts. . . . Overall, the integrity of the judicial system serves as a unifying principle behind the seemingly disparate use of our supervisory powers. . . . Thus, we are more likely to invoke our supervisory powers when there is a pervasive and significant problem . . . or when the

[19] The defendant also requests that we exercise our supervisory authority to direct trial courts to give a cautionary instruction regarding the suggestibility of child witnesses and to require the video recording of interviews with child victims of sexual abuse. The defendant devotes less than one page of his brief to these claims and fails to support his argument with any relevant authorities. As such, these claims are inadequately briefed and, thus, we decline to review them. See, e.g., *Starboard Fairfield Development, LLC* v. *Gremp*, 195 Conn. App. 21, 31, 223 A.3d 75 (2019).

conduct or violation at issue is offensive to the sound administration of justice . . . ." (Internal quotation marks omitted.) *In re D'Andre T.*, 201 Conn. App. 396, 407–408, 242 A.3d 766, cert. denied, 336 Conn. 902, 242 A.3d 480 (2020).

We are not persuaded that this is a proper occasion to exercise our supervisory authority to adopt a pretrial taint procedure like the one in *Michaels* because we are not convinced that the traditional protections already in place are inadequate to protect the rights of the defendant or the integrity of the judicial system. Indeed, our Supreme Court has cautioned that "[t]he majority of jurisdictions have rejected the *Michaels* approach on the ground that existing procedures that address the competency and credibility of witnesses are adequate to deal with concerns regarding child testimony." *State* v. *Michael H.*, supra, 291 Conn. 765. It similarly observed that, "[e]ven in the minority of jurisdictions that have responded favorably to the *Michaels* rationale, courts have rejected the idea of a separate pretrial taint hearing and, instead, have permitted an inquiry into suggestiveness through the use of competency hearings." Id., 766.

In this case, the defendant, who never requested a pretrial taint hearing before the trial court, had every opportunity to explore the issue of suggestive and coercive questioning at trial. It was then for the jury, on the basis of its firsthand observation of the witnesses' conduct, demeanor and attitude, to determine the credibility of the witnesses' testimony and the weight to give to it. See *State* v. *Russell*, 101 Conn. App. 298, 316, 922 A.2d 191 ("it is well established that the jury is the sole arbiter of witness credibility and may accept or reject, in whole or in part, the truth of any witness' testimony"), cert. denied, 284 Conn. 910, 931 A.2d 934 (2007). Accordingly, we decline the defendant's invitation at this juncture to exercise our supervisory authority to require pretrial taint hearings in child sexual abuse cases.

The judgment is affirmed.

In this opinion ALVORD, J., concurred.

CRADLE, J., concurring. I agree that the judgment of conviction should be affirmed. I part ways, however, with the *Golding* analysis undertaken by the majority in part II of its opinion pertaining to the defendant's unpreserved claim that he was deprived of his right to due process because the court failed to hold a pretrial taint hearing to evaluate the reliability of the child complainant, R, to determine whether her statements and subsequent testimony were reliable or whether they were contaminated by coercive and suggestive questioning by family members and health-care providers. See *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). I would assume, without deciding, that the defendant's claim is reviewable under *Golding*, but I would conclude, for the following reasons, that his claim fails under the third prong of *Golding* because he has failed to establish that the alleged constitutional violation exists and deprived him of a fair trial. Id., 240.

In support of his claim that he was entitled to a pretrial taint hearing, the defendant alleges that R's testimony and statements were marred by suggestive questions by L and medical professionals, biased interviewers, the absence of a spontaneous disclosure, incessant questioning, multiple interviews, the vilification of the defendant, the failure by the interviewers to entertain alternative explanations, and witness coaching. These allegations, however, are not persuasive, and, although the defendant attempts to analogize the present case to *State* v. *Michaels*, 136 N.J. 299, 642 A.2d 1372 (1994), he fails to make a showing that R's statements were the result of " 'some evidence' " of unduly

coercive or suggestive questioning; id., 320; which, under *Michaels*, is necessary to trigger a *Michaels* pretrial taint hearing.

In my view, the evidence highlighted by the defendant is not indicative of suggestive questioning. For example, the defendant asserts that subjecting R to multiple rounds of questioning was a coercive technique akin to the incessant interrogation techniques employed in *Michaels*.[1] It is true that R was questioned on four separate occasions: first, L questioned R at home at the time of her initial disclosure; once at Bridgeport Hospital by Adam Paquin, a clinical social worker; once during her forensic interview; and once at Yale New Haven Hospital by Beth A. Moller, an advanced practice registered nurse. Unlike in *Michaels*, however, in which the child complainants were incessantly asked repeated suggestive questions by investigators—often until they gave inculpatory responses—the additional interviews in the present case were the product of standard reporting procedures[2] and were part of a course of medical treatment, rather than as part of an incessant investigation.[3]

[1] As the majority aptly recounted, the court in *Michaels* held that the record was "replete with instances in which children were asked blatantly leading questions that furnished information the children themselves had not mentioned" and subjected them to "repeated, almost incessant, interrogation." *State* v. *Michaels*, supra, 136 N.J. 314–15. The *Michaels* record also disclosed the "use of mild threats, cajoling, and bribing"; vilification of the defendant; encouragement that the children "keep [the defendant] in jail"; and provided the cooperative children with replica police badges. Id., 315. Moreover, the court in *Michaels* observed that "[p]ositive reinforcement was given when children made inculpatory statements, whereas negative reinforcement was expressed when children denied being abused or made exculpatory statements." Id.

[2] Officer Davon Polite testified that it was protocol to invite the complainant to go to the hospital. Paquin testified that it was standard practice to recommend that child sexual abuse victims visit the Center for Family Justice for a forensic investigation. Paquin also testified that it was common to refer the victim to resources for further assessment and treatment.

[3] Moller testified that the questions she asked R were medical in nature. Moller further testified that she questioned R to determine whether she had any concerns about her body for the purpose of deciding "what kind of

See *State* v. *Michaels*, supra, 136 N.J. 314–15. Moreover, the interviewers made a conscious effort to minimize the number of times that R was questioned. Next, the defendant asserts that L's statements to Paquin and Moller—about what R told her—biased them against the defendant. This assertion misconstrues the nature of children's hospital visits, during which the parents, necessarily, must explain to medical personnel the reason they are seeking treatment for the child. Here, L had to report to Paquin and Moller what R told her so that they could properly evaluate and treat R. The defendant also attempts to construe Paquin's questions as suggestive because they were asked as " 'yes/no, fairly direct questions.' " Although a yes or no question can be suggestive, the form of question is not, by itself, inherently suggestive. Because the defendant does not identify specific questions that he believed to be misleading, the use of a yes or no question is not itself evidence of suggestibility. Moreover, the defendant argues that R's interviewers failed to ask R questions about details that could have demonstrated an innocent explanation for the defendant's contact with R's intimate parts. It is undisputed, however, that R was three years of age, had limited verbal skills, and all of her interviewers expressed some difficulty communicating with her, thus making it difficult for interviewers to elicit details from their conversations with her.

Furthermore, some of the defendant's assertions misrepresent the facts or are entirely unsupported by citations to the record. First, despite alleging that R was "questioned incessantly" by L, the defendant supports this notion by citing to trial testimony from R and Polite that imply little more than the fact that L and R talked about the incident between September 22, 2019, and

checkup she may need . . . ." Paquin testified that he engaged with R as part of her treatment team.

the start of trial.[4] Next, the defendant alleges that L coached R on how to testify prior to trial but, rather than citing to any evidence of coaching, the defendant relies on occasional inconsistencies in R's testimony about specific details[5] and past disputes between L and the defendant. Although the defendant alleges that L "had a motive to coach [R] to make a false allegation," the record does not demonstrate that she acted on that motive. Additionally, although the defendant argues that he was vilified by L, he only identifies evidence that implies that L was upset with, and perhaps disliked, him, not that L communicated those feelings to R.

Finally, the defendant only identifies three questions asked of R that he argues were suggestive or leading. First, according to Moller's summary of her conversation with L, L asked R, "did [the defendant] hurt you?" Second, the same report stated that L asked R to "show [her] what he did." Third, Moller asked R if she had any " 'worries about [her] body.' " These are not " 'repeated leading questions,' " nor do they demonstrate an absence of spontaneous disclosure, as R made the same representations to Paquin and at trial, outside the presence of L.

[4] R testified that she had been talking to L about her upcoming testimony in court. In response to defense counsel's question about L's reason for waiting two days before calling the police, Polite testified that "[L] stated that she was still talking to her daughter and that [R] was very young, so it was hard to get any information out of her at that time."

[5] The defendant references several inconsistencies in R's testimony but assigns particular weight to R's statement during the forensic interview that " 'Justice hurt [her].' " Justice was identified at trial as R's brother. As the defendant himself reminds us, however, R is a young child with limited speech skills, and certain limitations and difficulties must be expected when dealing with the testimony of child witnesses. Furthermore, R's inconsistent testimony is not sufficient to prove that R was questioned in a suggestive manner. In fact, her consistent statements, over the course of two years, with regard to the substance of what happened during the incident—that the defendant touched her intimate parts with his finger in a way that hurt her—contradicts the defendant's point.

Accordingly, I would conclude, on the basis of the foregoing, that the defendant's claim fails under the third prong of *Golding* in that he has failed to establish that the alleged constitutional violation exists and deprived him of a fair trial. Accordingly, I concur in the judgment affirming the defendant's conviction.