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charge, and (2) the defendant has either induced these errors or waived them pursuant to *State v. Kitchens*, 299 Conn. 447, 10 A.3d 942 (2011).<sup>9</sup> We conclude that the defendant’s claim was not preserved by his request to charge or exceptions taken at trial and, accordingly, we do not reach its merits.

The following additional facts and procedural history are necessary for the resolution of this claim. During the cross-examination of Winkler, defense counsel introduced portions of Jackson’s out-of-court identification “in order to show that Jackson mistakenly identified [the defendant] because of the unnecessarily suggestive procedure.” The state objected to its admission. The court sustained the state’s objection, but noted that the defendant “[had opened] the door to the state possibly using other portions [of the out-of-court identification] to rehabilitate the identification that [Jackson] made of the defendant because the [out-of-court identification] that the court had previously ordered stricken because it was suggestive has been introduced into this case by the defense. . . . [T]he state [is] free to inquire to show that [Jackson] did in fact make that identification.” (Emphasis added.) Defense counsel then requested a limiting instruction that the comments of the interviewing detectives should not be taken for their truth; however, defense counsel did not request a limiting instruction as to Jackson’s statement. The court then instructed the jury as follows: “The . . . evidence is being offered for the statements

<sup>9</sup> The defendant has not requested review as to this claim under *State v. Golding*, 213 Conn. 233, 567 A.2d 823 (1989), as modified by *In re Yasiel R.*, 317 Conn. 773, 781, 120 A.3d 1188 (2015). Accordingly, we need not determine if these claims have been waived pursuant to *State v. Kitchens*, supra, 299 Conn. 447. See *State v. Hall-Davis*, 177 Conn. App. 211, 240, 172 A.3d 222 (2017) (“[i]t is well established in Connecticut that unpreserved claims of improper jury instructions are reviewable under *Golding* unless they have been induced or implicitly waived” [internal quotation marks omitted]).

NOTE: These pages (179 Conn. App. 623 and 624) are in replacement of the same numbered pages that appear in the Connecticut Law Journal of 13 February 2018.

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of [Jackson]. . . . [Y]ou'll hear certain expressions of opinion by the police officers and those are not being offered for the truth of their opinions . . . but to show their effect on [Jackson] or his responses to those statements." Jackson's videotaped interview was then admitted into evidence as a full exhibit and viewed by the jury.

On September 29, 2014, the defendant submitted a draft request to charge that stated in relevant part: "In this case, the identification of the defendant by the witness, [Jackson], was the result of suggestive identification procedures." On October 3, 2014, the court provided defense counsel and the state with a draft of its proposed jury instructions. That same morning, the court, defense counsel and the prosecutor then reviewed the proposed jury instructions page by page. The court indicated that it had incorporated language from the Connecticut criminal jury instructions into the section regarding "identification of the defendant." Defense counsel objected, and referred the court to the defendant's September 29, 2014 request to charge the jury with the following language: "In this case, the identification of the defendant by the witness, [Jackson], was the result of suggestive identification procedures." The court denied that request, stating: "The court's problem with the [defendant's] request is the jury may well make that determination. . . . I'm not preventing you from arguing it. I anticipate you arguing it . . . . But I can't make that leap and make a finding of suggestiveness. I found that while there was a taint to the out-of-court identification, I was satisfied based upon [Jackson's] statements and his prior familiarity with the defendant before the homicide, that his in-court identification was not the result of any suggestive out-of-court identification procedure. . . . I'm not going to charge this jury that the identification was suggestive. That may be something that [the jurors] make a [determination] as to which might create reasonable doubt.