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State v. Campbell

XVI

CUMULATIVE ERROR

Finally, we observe that it is unnecessary to address the defendant's claim that this court should adopt the federal cumulative error rule. We recently explained that doctrine, observing that "[f]ederal case law in which the cumulative unfairness doctrine . . . has required reversal of a conviction essentially seems to fall into one or more of the following categories: (1) the errors directly related to and impacted an identified right essential to a fair trial, i.e., the right to a presumption of innocence or the right to present witnesses in one's own defense; (2) at least one of the errors was so significant as to render it highly doubtful that the defendant had received a fair trial and the remaining errors created the additional doubt necessary to establish that there was serious doubt about the fairness of the trial, which is necessary to reverse a conviction; or (3) the errors were pervasive throughout the trial." (Citation omitted; internal quotation marks omitted.) *Hinds v. Commissioner of Correction*, 321 Conn. 56, 95, 136 A.3d 596 (2016). In the present case, just as in *Hinds*, we conclude that, "even if we were to recognize the cumulative error doctrine as articulated in the federal courts . . . the trial improprieties in the present case would not justify relief under that doctrine."³⁶ *Id.*

The appeal is dismissed with respect to the defendant's claims regarding the penalty phase and the sentence of death; the judgment is affirmed in all other respects.

In this opinion the other justices concurred.

in part I of this opinion, the defendant's challenges to the penalty phase are not ripe, and we do not address them. To the extent that the defendant's brief may be construed also to allege that judicial bias infected the guilt phase, we deem that issue to be inadequately briefed and decline to address it.

³⁶ The case is remanded to the trial court with direction to grant the defendant's motion to vacate his convictions of two counts of murder in violation of General Statutes (Rev. to 1999) § 53a-54a (a). See *State v.*

NOTE: These pages (328 Conn. 557 and 558) are in replacement of the same numbered pages that appear in the Connecticut Law Journal of 17 April 2018.

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328 Conn. 558

State v. Cushard

STATE OF CONNECTICUT v. ROBERT CUSHARD
(SC 19708)

Palmer, McDonald, Robinson, D'Auria and Vertefeuille, Js.

Syllabus

Convicted of the crimes of robbery in the first degree, assault in the first degree, and burglary in the first degree, the defendant appealed to the Appellate Court, claiming that, because his initial waiver of the right to counsel was not knowing and voluntary, he was deprived of his right to counsel under the sixth amendment to the federal constitution and, consequently, was entitled to automatic reversal of his judgment of conviction, notwithstanding a subsequent, valid waiver of the right to counsel. In October, 2012, the trial court, after canvassing the defendant, granted his motion to represent himself. At the next court date, the defendant claimed that he had not received all discovery materials from the state and, subsequently, sent a letter to the prosecutor asking for assistance obtaining certain records. During his next court appearance, which concerned the letter, the trial court denied the defendant's request to have the public defender assist him in obtaining the records because the defendant had elected to represent himself. During that same court appearance, the court also granted the state's motion to take a biological sample from the defendant for DNA testing. In February, 2013, prior to trial, the court conducted a second, more thorough canvass concerning the defendant's decision to represent himself. Following that canvass, the defendant reiterated his desire to represent himself, and the court found that the defendant had knowingly and voluntarily waived his right to counsel. On appeal from the judgment of conviction, the Appellate Court agreed with the defendant that the October, 2012 canvass was inadequate and that the trial court had abused its discretion in allowing him to represent himself. The Appellate Court concluded, however, that the initial, inadequate waiver of the assistance of counsel was subject to a harmless error analysis and that the lack of counsel between the initial waiver and the second waiver, which the defendant did not contest the validity of, was harmless beyond a reasonable doubt. Accordingly, the Appellate Court affirmed the judgment of the trial court. On the granting of certification, the defendant appealed to this court. *Held* that, even if the defendant's initial waiver of the right to counsel following the October, 2012 canvass was inadequate, the Appellate Court properly applied harmless error review to the defendant's claim and correctly concluded that any error by the trial court was harmless beyond a reasonable doubt in light of the defendant's adequate waiver following the February, 2013 canvass: there was no merit to the defendant's claim that reversal is always required when there has been an inadequate waiver of the right to counsel, as there is a critical distinction between

Polanco, 308 Conn. 242, 244, 245, 61 A.3d 1084 (2013) (vacatur is proper remedy for violation of double jeopardy arising from conviction of greater and lesser included offenses); see also *State v. Miranda*, 317 Conn. 741, 745, 120 A.3d 490 (2015) (murder is lesser included offense of capital felony).