

199 Conn. App. 187

JULY, 2020

187

State v. Sumler

he had sought *Golding* review, to which he arguably would be entitled on this claim of constitutional magnitude, his express waiver of any claim stemming from the postarrest delay is fatal to his claim.⁹ In light of that express waiver, his claim under the IAD is likewise without merit.¹⁰

Accordingly, we conclude that the trial court properly denied the defendant's motions to dismiss.

The judgment is affirmed.

In this opinion the other judges concurred.

STATE OF CONNECTICUT v. JAMAL SUMLER
(AC 43024)

Prescott, Devlin and Bishop, Js.

Syllabus

Convicted, after a jury trial, of the crimes of murder, conspiracy to commit robbery in the first degree and carrying a pistol without a permit, and, after a trial to the court, of the crime of criminal possession of a pistol or revolver, the defendant appealed. The defendant's conviction stemmed from an incident in which he shot and killed a convenience store clerk while he and another individual were robbing the store. Prior to trial, the defendant filed a motion in limine to preclude the state from introducing testimony from his former probation officer, D, regarding her identification of him in a surveillance video from a grocery store, and a motion to suppress two statements that he made during a conversation with a

⁹ We note that, despite claiming in his statement of issues and in the conclusion of his appellate brief that the trial court erred in concluding "that the defendant had entirely waived the IAD right by conceding that he did not allege any postarrest delay," the defendant did not brief this claim.

¹⁰ Because the defendant expressly waived his claim to any alleged postarrest delay, we need not address his various arguments pertaining to the commencement of that 180 period—whether it began on the date that he requested a speedy disposition under the IAD, the date that he was taken into custody in Connecticut, the date of his first court appearance or even the date that he became a suspect in the subject crimes. Likewise, we need not resolve the issue of whether "final disposition" under the IAD occurred when the defendant entered his nolo contendere plea or upon sentencing.

NOTE: These pages (199 Conn. App. 187 and 188) are in replacement of the same numbered pages that appear in the Connecticut Law Journal of 21 July 2020.

188

JULY, 2020

199 Conn. App. 187

State v. Sumler

police officer while he was being transported to the police department following his arrest for violation of probation. Following a hearing, the trial court denied both motions. *Held:*

1. The defendant's unpreserved claim that the trial judge violated his constitutional right to due process by improperly failing to recuse himself from presiding over the defendant's trial because he previously had signed search and seizure and arrest warrants against the defendant in this case was unavailing: because the defendant did not assert actual bias on the part of the trial judge, his claim necessarily failed, and, therefore, he could not prevail pursuant to *State v. Golding* (213 Conn. 233), as he did not demonstrate the existence of a constitutional violation; moreover, this court was not persuaded by the defendant's assertion that the trial judge's failure to recuse himself constituted plain error because, at minimum, it created an appearance of impropriety, as the judge's conduct was not expressly prohibited by our rules, statutes, or case law, and, therefore, it did not constitute plain error or even error at all.
2. The trial court did not abuse its discretion in admitting D's testimony identifying the defendant in the surveillance video from the grocery store; contrary to the defendant's contention that D's testimony constituted her opinion on an ultimate issue reserved to the jury, namely, his criminal culpability, in violation of the applicable rule (§ 7-3) of the Connecticut Code of Evidence, and, although the defendant's presence in the grocery store may have been relevant to his participation in the acts that were committed at the convenience store, D did not express an opinion regarding the identity of the person who committed the crimes at the convenience store, and, therefore, her testimony did not constitute a legal opinion about the defendant's guilt as to the crimes with which he was charged.
3. The defendant could not prevail on his claim that the trial court improperly denied his motion to suppress the statements he made to a police officer while he was being transported to the police department following his arrest, which was based on his claim that those statements were made during custodial interrogation without his being advised of his rights pursuant to *Miranda v. Arizona* (384 U.S. 436); the trial court properly determined that the officer's conversation with the defendant did not constitute custodial interrogation for *Miranda* purposes because the officer's questions were not reasonably likely to elicit incriminating statements from the defendant.

Argued March 9—officially released July 21, 2020

Procedural History

Substitute information charging the defendant with the crimes of felony murder, murder, conspiracy to commit robbery in the first degree, criminal possession of