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sively supported the state's theory as to the defendant's motive, as motive is not an element of the crime of murder, and the court properly instructed the jury that, even if it credited certain testimony that the defendant was engaged in the sale of drugs on the night of the murder, the jury could consider that evidence only if it found that it logically and rationally supported the state's theory of motive.

Argued January 10—officially released June 14, 2022

Procedural History

Substitute information charging the defendant with the crime of murder, brought to the Superior Court in the judicial district of Hartford and tried to the jury before *Gold, J.*; verdict and judgment of guilty, from which the defendant appealed to this court. *Affirmed.*

Richard Emanuel, for the appellant (defendant).

Robert J. Scheinblum, senior assistant state's attorney, with whom, on the brief, were *Sharmese L. Walcott*, state's attorney, and *John F. Fahey*, supervisory assistant state's attorney, for the appellee (state).

Opinion

KELLER, J. The defendant, Rafael Ortiz, appeals¹ from the judgment of conviction, rendered following a jury trial, of murder in violation of General Statutes § 53a-54a (a).² The defendant claims that (1) prosecutorial impropriety deprived him of his right to a fair trial, (2) the trial court committed evidentiary and constitutional error by precluding defense counsel from using certain prior felony convictions to impeach two of the state's witnesses, and (3) the trial court erred in its charge to the jury. We disagree with each of these claims and, accordingly, affirm the judgment of the trial court.

¹ The defendant appealed directly to this court pursuant to General Statutes § 51-199 (b) (3).

² General Statutes § 53a-54a (a) provides in relevant part: "A person is guilty of murder when, with intent to cause the death of another person, he causes the death of such person"

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The record reveals the following facts, which the jury reasonably could have found, and procedural history. On the evening of June 10, 2003, the victim, Benjamin Baez, Jr., and his friend, Enrique Lugo, were “hanging out” and smoking phencyclidine (PCP). Shortly before midnight, Lugo drove the two men in his car to Main Street in Hartford, near Salvin Shoes, to buy more PCP. Once there, the victim got out of the parked car while Lugo remained in it. Shortly after the victim returned to the car, Lugo saw the defendant, whom he had known for many years and considered a friend, approach the car, aim a gun at the victim, and shoot the victim through the front passenger side window. After the shooting, Lugo rushed the victim to Saint Francis Hospital and Medical Center, where he was later pronounced dead.

Wilbur Irizarry and Lisa Rosario also witnessed the shooting.³ Irizarry and his cousin had gone to Main Street to “hang out” with friends in front of Bashner’s Liquors, down the street from Salvin Shoes. When they arrived, Irizarry noticed that the defendant, whom he knew as “Felo,” was there with a man who went by the name “Lu-Rock.” Although Irizarry was aware that the defendant sold drugs, it was unusual to see him doing so at this location. Irizarry heard the defendant arguing with another man whom Irizarry did not know but who was later identified as the victim. Initially, he could not hear what the men were arguing about. As he got closer, however, he heard the victim ask the defendant, “[Felo], can you give me some work?” Irizarry, who previously had been involved in the sale of drugs, understood this to mean that the victim was

³ We note that neither Lugo, Irizarry, nor Rosario came forward with information about the shooting until they were contacted by investigators from the cold case unit of the Office of the Chief State’s Attorney, in late 2015 and early 2016. As discussed subsequently in this opinion, all three witnesses separately identified the defendant as the shooter in a double-blind, sequential photographic array procedure and gave statements implicating the defendant in the victim’s murder.

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ever inferences should be drawn from the defendant’s prior [mis]conduct are for the jury to determine. . . . Accordingly, we decline[d] to adopt a rule requiring that the trial court make a preliminary finding by clear and convincing evidence that prior misconduct occurred before submitting that evidence to the jury. . . .

“Thus, our conclusion . . . implicitly reject[ed] the notion that any particular standard of proof is necessary in a trial court’s jury instructions regarding prior misconduct evidence, and [made] clear that prior misconduct evidence may be considered by the jury for a proper purpose if there [is] evidence from which the jury reasonably could . . . [conclude] that the prior act of misconduct occurred and that the defendant was the actor.” (Citations omitted; emphasis omitted; internal quotation marks omitted.) *State v. Cutler*, supra, 293 Conn. 320–21.

In *Cutler*, we relied on our reasoning in *Aaron L.* in concluding that the trial court was not required to instruct the jury that it must “find the existence of a prior act of misconduct by a preponderance of the evidence before considering it for a proper purpose.” *Id.*, 315. Although we recognized that the issue in *Aaron L.* was one of the admissibility of prior misconduct evidence, whereas, in *Cutler*, the issue before us was the propriety of jury instructions on the use of prior misconduct evidence, we concluded that such a distinction did not prevent us “from employing our well reasoned conclusion in *Aaron L.* as guidance in the present case.” *Id.*, 320. In so doing, we concluded that, “[when] the admission of prior misconduct evidence depends on the trial court’s determination that there is sufficient evidence from which the jury reasonably could conclude that the prior acts of misconduct occurred and that the defendant was the actor . . . we see no reason to impose on trial courts a jury instruction that requires jurors to consider the properly admissible prior misconduct evidence at a higher standard. . . . Accordingly,

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we conclude[d] that it is not necessary that a trial court instruct the jury that it must find, by a preponderance of the evidence, that prior acts of misconduct actually occurred at the hands of the defendant. Instead, a jury may consider prior misconduct evidence for the proper purpose for which it is admitted if there is evidence from which the jury reasonably could conclude that the defendant actually committed the misconduct.” (Citations omitted; footnote omitted.) *Id.*, 321–22. We concluded, therefore, that the trial court properly instructed the jury that “it could consider the state’s prior misconduct evidence if it ‘believe[d]’ that evidence and found that it ‘logically and rationally’ supported the issue for which it was being offered.”¹³ *Id.*, 322.

Guided by this prior case law, it is apparent that the trial court properly declined to instruct the jury that it could consider the prior misconduct evidence only if

¹³ The defendant argues that *Aaron L.* and *Cutler* are inapplicable to the present case because those cases “involved the issue of whether a particular standard of proof is needed in order to establish that an act of misconduct has occurred,” whereas, here, the issue involves the omission of the word “conclusively” in a jury charge, which “does not relate to the burden of proof for an act of misconduct [and] . . . serves an entirely different function.” (Emphasis omitted; internal quotation marks omitted.) Specifically, the defendant argues that “[t]he state fails to recognize that the phrase ‘logically, rationally and conclusively’ . . . does not relate to whether an act of misconduct occurred; the phrase relates to whether the act of misconduct (if proved to the jury’s satisfaction under the ‘believe’ standard) supports the proposition or issue for which the misconduct was offered” (Citation omitted; emphasis omitted.) We are not persuaded. Although we acknowledge that *Aaron L.* differs slightly insofar as it involved the question of whether the *trial court* was required to find, by clear and convincing evidence, that the alleged prior misconduct had occurred, *Cutler* is wholly applicable to the present case as it, too, involved the question of whether a trial court was required to instruct a jury that it must find prior misconduct evidence to be proven by a heightened standard. Notably, and as we explained, this court expressly rejected that proposition and concluded that it saw “no reason to impose on trial courts a jury instruction that requires jurors to consider the properly admissible prior misconduct evidence at a higher standard.” (Emphasis added.) *State v. Cutler*, *supra*, 293 Conn. 321–22.