No. 19-___

IN THE

Supreme Court of the United States

JEFFREY TODD PALUMBO,

Petitioner,

v.

STATE OF CONNECTICUT,

Respondent.

On Petition for a Writ of Certiorari to the Connecticut Appellate Court

PETITION FOR A WRIT OF CERTIORARI

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March 12, 2020

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20002

QUESTION PRESENTED

When a criminal defendant has been advised prior to trial of his rights under *Miranda v. Arizona*, 384 U.S. 346 (1966), and then testifies at trial to an exculpatory version of events involving an act of uncharged misconduct, does a prosecutor violate *Doyle v. Ohio*, 426 U.S. 610 (1976) by eliciting the fact that the exculpatory story is being told for the "first time" at trial, by asking, "That's the first time that we're hearing this. Isn't that correct?"; "And this is the first time that we're hearing that information?"

TABLE OF CONTENTS

TABLE OF CONTENTS—Continued

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

PETITION FOR A WRIT OF CERTIORARI

The petitioner, Jeffrey Todd Palumbo, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Connecticut Appellate Court, rendered on October 8, 2019.

OPINION BELOW

The opinion of the intermediate Connecticut Appellate Court is officially reported at 193 Conn. App. 457, and is reprinted in the Appendix ("App.") to this petition, at App. 1a–16a. The opinion is unofficially reported at 219 A.3d 878.

JURISDICTION

The judgment of the Connecticut Appellate Court was entered on October 8, 2019. The petitioner timely filed a motion for reconsideration, which was denied by the Connecticut Appellate Court on October 30, 2019. See App. 17a. The petitioner then filed, in the Connecticut Supreme Court, a petition for certification to appeal, which the Connecticut Supreme Court denied on December 12, 2019. See App. 18a. The petitioner then timely filed a motion for reconsideration of the Order denying the petition for certification to appeal, and the Connecticut Supreme Court denied that motion for reconsideration on January 14, 2020. See App. 19a. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257(a), on the grounds that the State of Connecticut has violated the petitioner's rights under the Fifth and Fourteenth Amendments to the Constitution of the United States.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The **Fifth Amendment to the Constitution of the United States** provides in pertinent part: ". . . nor shall any person . . . be deprived of life, liberty, or property, without due process of law . . . ."

The **Fourteenth Amendment to the Constitution of the United States** provides in pertinent part: ". . . nor shall any State deprive any person of life, liberty or property, without due process of law; . . . ."

Connecticut General Statutes § 53-21 (Injury or risk of injury to a child), provides in pertinent part: "(a) Any person who . . . (2) has contact with the intimate parts, as defined in section 53a-65, of a child under the age of sixteen years or subjects a child under sixteen years of age to contact with the intimate parts of such person, in a sexual and indecent manner likely to impair the health or morals of such child . . . shall be guilty of . . . (B) a class B felony for a violation of subdivision (2) of this subsection, 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."

Connecticut General Statutes § 53a-70 (Sexual assault in the first degree), provides in pertinent part: "(a) 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 thirteen years of age and the actor is more than two years older than such person . . . ."

Connecticut General Statutes § 53a-73a (Sexual assault in the fourth degree), provides in pertinent part: "(a) 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. . . ."

INTRODUCTION

If a trial prosecutor *wanted* to violate a criminal defendant's rights under *Doyle v. Ohio*, 426 U.S. 610 (1976), how would he or she proceed? If the defendant had received *Miranda*[1] warnings at some point prior to trial, and then testified at trial to an exculpatory version of events that had not previously been revealed, the prosecutor's course of action would be clear. When cross-examining the defendant, the prosecutor would pose questions about why the defendant had not told the exculpatory story at an earlier point in time, i.e., questions "obviously designed to imply that [the defendant's] defense was fabricated." *Briggs v. Connecticut*, 447 U.S. 912, 914 (1979) (Marshall and Brennan, *Js*., dissenting from denial of certiorari). The questions might look something like this:

> **"That's the first time that we're hearing this. Isn't that correct?"**
>
> **"And this is the first time that we're hearing that information?"**

Or, the prosecutor might ask a question designed to show that the defendant failed to give the exculpatory story in the period *between* his initial arrest (when

[1] *Miranda v. Arizona*, 384 U.S. 436 (1966).

Miranda warnings were first administered) and his second arrest (when the warnings were given again):

> **"And between March 31st of 2014 and your arrest in September [2014] in Montville and in November [2014] in - - in Danielson, you never told anybody about that?"**

* * *

The three questions highlighted above are, in fact, three questions that a trial prosecutor asked Jeffrey Todd Palumbo during his cross-examination at trial. All three questions related to an incident of uncharged misconduct, and those three questions comprised the defendant's *Doyle* claim in the state courts. On appeal, the defendant maintained that the first two questions, which were not objected to at trial, constituted clear violations of *Doyle*, and that the third question, which was objected to by defense counsel and was sustained by the trial court, constituted an *attempt* to violate *Doyle*.

The Connecticut Appellate Court concluded that the two "first time" questions did not violate *Doyle.* As for the third question, the Appellate Court held that assuming, without deciding, that it was an attempt to violate *Doyle*, it did not amount to prosecutorial impropriety that deprived the petitioner of his due process right to a fair trial.

STATEMENT OF THE CASE

I. STATE TRIAL COURT PROCEEDINGS

The petitioner was arrested on September 12, 2014, and November 12, 2014, for offenses allegedly occurring in the Connecticut towns of Montville and Danielson, respectively. Both arrests arose from accusations of sexual abuse made by the daughter of the petitioner's former live-in girlfriend. During the time frame of the alleged acts, the complainant was between seven and nine years of age, and the petitioner was between thirty-two and thirty-three years of age. The two separate cases were consolidated, and a five-day jury trial took place in November 2016.

On November 29, 2016, the jury convicted the petitioner of all charges, to wit, sexual assault in the first degree in violation of Gen. Stat. § 53a-70(a)(2), sexual assault in the fourth degree in violation of Gen. Stat. § 53a-73a(a)(1)(A), and two counts of risk of injury to a child in violation of Gen. Stat. § 53-21(a)(2). On February 1, 2017, the petitioner was sentenced to a total effective sentence of 10 years imprisonment, mandatory, and 8 years of special parole.

A. The Complainant's Trial Testimony

The complainant testified about four separate incidents of alleged sexual abuse. Two of those incidents were charged offenses (that on one occasion the petitioner "rubbed [the complainant's] vagina over her underwear," and that on another occasion he "touched his penis to her vagina, making 'skin to skin' contact.") *State v. Palumbo*, supra, 460, at App. 5a–6a. Each of

the charged offenses gave rise to two separate convictions.[2]

In addition to the charged offenses, "there was testimony [from the complainant] relating to two other alleged incidents when the defendant rubbed the victim's vagina over her underwear. The [petitioner] was not charged for those incidents. One occurred at the [petitioner's] apartment . . . , and the other occurred when the [petitioner] and the victim were hiking alone at a state park." *Id.*, 461, at App. 6a–7a. The *Doyle* issue relates to the uncharged hiking incident.

According to the complainant, there was an occasion when her mother, brother, the petitioner, and some of his friends spent the day at a campground at a Connecticut state park. At some point the petitioner asked if anyone wanted to go for a hike, and the complainant was the only one who said yes. The complainant testified that after she and the petitioner hiked for a while, the petitioner put down a blanket so they could sit on it. He then started rubbing her "front private" area "underneath [her] pants but over [her] underwear." Tr. of Nov. 18, 2016, at 57.

B. The Petitioner's Pre-Arrest and Pre-*Miranda* Interview

The police initially had been notified in January 2014 about the complainant's accusations against the petitioner. "On March 31, 2014 [prior to the petitioner's arrest], police officers went to the [petitioner's]

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[2] The alleged touching of the complainant over her underwear, was the basis for the convictions of sexual assault in the fourth degree and risk of injury to a child. The alleged penile-vaginal touching was the basis for the convictions of sexual assault in the first degree and risk of injury to a child.

house and asked to talk to him about a case they were investigating. The [petitioner] agreed to meet with the police at the police barracks where the police interviewed the [petitioner]." *State v. Palumbo*, supra, 460, at App. 6a. At the March 31 interview, the petitioner was not accompanied by counsel, he was not in custody, and he was not given *Miranda* warnings. *Id*. The interview was videotaped.

At the interview, the petitioner denied sexually assaulting the complainant. However, he confirmed his presence at certain events that the complainant had described, including going for a hike with her at a state park. The petitioner agreed that he could have accidentally or inadvertently touched her while she was sitting in his lap or while he was carrying her.

C. The Petitioner Receives *Miranda* Warnings

Approximately six months after the police interview, the defendant was arrested (September 12, 2014) and advised of his *Miranda* rights. He was again given *Miranda* warnings at the time of his second arrest, on November 12, 2014.

D. The Petitioner's Trial Testimony

At trial, "[t]he [petitioner] elected to testify." *State v. Palumbo*, supra, 461, at App. 7a. His direct examination consisted of just three questions:

> Q: Mr. Palumbo, you heard the testimony of [the complainant], did you not?
>
> A: Yes.
>
> Q: You heard it?
>
> A: Yes, I did.

> Q: Did you sexually assault [the complainant] at any time?
>
> A: No.

Tr. of Nov. 22, 2016, at 103.

"On cross-examination, the state played portions of his March 31, 2014 police interview and questioned him about the interview and the hiking incident. The [petitioner] testified that, during the hike, there were other people around. The state then asked the [petitioner] a series of questions that focused on whether the [petitioner] previously had told the police that there were other people 'around' during the hike." *State v. Palumbo*, supra, 461, at App. 7a. The colloquy was as follows:

> Q: [By prosecutor]: Okay. So only the two of you would know what happened out in - - in the woods?
>
> A: [The Defendant]: Correct. There was a lot of other people there at the time, too, walking around hiking, too, so - -
>
> Q: You didn't tell the police that when you talked to them.
>
> A: They didn't ask.
>
> **[1] Q: That's the first time that we're hearing this. Isn't that correct?**
>
> A: I do believe I - - I don't - - actually I don't know if I told them that at the time or not. The fact is is (sic) when we were walking around, there were other people there. The place was busy. It was in the middle of the summer and it was Green Falls [State Park].

[2] Q: And this is the first time that we're hearing that information?

A: Nobody inquired previous to it.

Q: Well, you're in a two-hour interview with police officers and you have time to talk about other things, you talk about your vaporizer, you talk about your brewing at the beginning of the video?

A: Yes, when inquired.

Q: And you never thought to mention to them that there were a bunch of other people around on this hike?

A: Well, there's people walking. It's a hiking path at Green Falls. There w[ere] people camping there. As we were walking, we passed people, we had conversations with people. So, yes, there's other people, but nothing - - again, nothing that I thought of, nothing out of the ordinary, nothing more than a hike, a normal hike.

Q: So when you're in an interview room with two police officers being accused of touching a child on a hike - -

A: Yeah.

Q: - - alone, you didn't think it was helpful information that maybe there were other people around?

A: I had stated that there were other people around in the beginning. I stated that I had asked a bunch of other people if they wanted to go for a hike, too.

Q: So they were back at the campsite?

A: Those people were, yes.

Q: Right. So we're talking about when you were on the hike alone with Elizabeth.

A: It just didn't cross my mind. There w[ere] people. You hike, you see people.

Q: Okay. And so you - - so you - -

A: And there was nothing spe - - yeah, I mean, yeah, there was - -

Q: So you didn't tell the officers about that?

A: No. No.

[3] Q: And between March 31st of 2014 and your arrest in September in Montville and in November in - - in Danielson, you never told anybody about that?

(Emphasis and numerical designations added.) *State v. Palumbo*, supra, 461-62 n. 4, at App. 7a–9a (reproducing the above colloquy).

Defense counsel immediately objected to question # 3, and the jury was excused. Tr. of Nov. 22, 2016, at 123. In the jury's absence, defense counsel claimed that question # 3 was "getting into protected matters such as attorney/client . . . privilege, a right to remain silent, and not to tell police anything that you don't want to." *Id*. The trial court sustained the defense objection. *State v. Palumbo*, supra, 461-62 and n. 4, at App. 9a. The court then said to the prosecutor: "All right. I think it can be - - *I think you've made the point, too*."[3] (Emphasis added.) Tr. of

[3] That remark suggests that the court recognized that the state had succeeded in informing the jury that the petitioner's exculpatory story was being told for the first time at trial.

Nov. 22, 2016, at 123-2. "When the jury returned, the court stated: "All right. I think when we broke there was an objection. That objection is sustained.'" *State v. Palumbo*, supra, 462 n. 4, at App. 9a.

II. STATE APPELLATE COURT PROCEEDINGS

A. The Petitioner's *Doyle* Claim in the Connecticut Appellate Court

On appeal, the petitioner claimed, inter alia, that his right to due process of law was violated when the prosecutor elicited, and attempted to elicit, evidence of the petitioner's post-*Miranda* silence in violation of *Doyle v. Ohio*, supra. The "silence" involved the petitioner's failure to have told anyone, prior to trial (and after receiving *Miranda* warnings), that when he and the complainant went hiking at the state park, they encountered many other individuals.[4]

The potential exculpatory thrust of such testimony is self-evident. If the jurors credited the petitioner's testimony about the presence of other persons, they reasonably could have concluded that it was highly unlikely that the petitioner would have sexually assaulted the complainant at that place, and at that time, thereby casting doubt on the complainant's testimony.

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[4] The petitioner's testimonial statements about "other people" included: "There was (sic) a lot of other people there at the time, too, walking around hiking, too, so –"; "The fact is, is when we were walking around, there were other people there. The place was busy. It was in the middle of the summer and it was Green Falls [State Park]."; "Well, there's people walking. It's a hiking path at Green Falls. There was (sic) people camping there. As we were walking, we passed people, we had conversations with people. So, yes, there's other people . . . ."; "There was (sic) people. You hike, you see people." *State v. Palumbo*, supra, 461-62 n. 4, at App. 7a–8a.

But due to the prosecutor's improper questioning, the jurors may have concluded that the petitioner's failure to have told the exculpatory story prior to trial was because the story had been recently fabricated.

On appeal, the petitioner acknowledged that the prosecutor had the right to question him about anything he said or did not say at the March 31, 2014 police interview. But petitioner asserted that the state had no right to question him about his failure to reveal exculpatory information (regarding the presence of other persons on the hiking trail) at any time *after* he first received *Miranda* warnings on September 12, 2014, and up to and including the time of trial. Petitioner argued that there is a significant constitutional difference between silence (on a given topic) *during* a pre-*Miranda* police interview, and silence (on that topic) *since* a police interview—where the "since" includes a period of time of more than two years after *Miranda* warnings had been administered.

The petitioner asserted that the two "first time" questions were *completed Doyle* violations, because they elicited the fact that the petitioner was silent after he received *Miranda* warnings and up until the time of his testimony. The petitioner also claimed that question # 3 was an *attempt* to violate *Doyle*, because it asked about his silence in the period between his first and second arrests, and thus included the post-*Miranda* warning period between those two arrests (on September 12, 2014 and November 12, 2014).

The state argued on appeal that no violations of *Doyle* had occurred, but if they had, any such violation was harmless beyond a reasonable doubt. The state also maintained that if any impropriety arose from the third question, that impropriety did not deprive the petitioner of his due process right to a fair trial.

B. How the Connecticut Appellate Court Resolved the *Doyle* Claims

Although there had been no contemporaneous objection to the two "first time" questions, the Connecticut Appellate Court reviewed the defendant's *Doyle* claim pursuant to *State v. Golding*, 213 Conn. 233, 239-40 (1989), as modified by *In re Yasiel*, 317 Conn. 773, 781 (2015). See *State v. Palumbo*, supra, 464, at App. 10a–11a. The *Golding* decision permits appellate review of unpreserved claims where, as here, the "record is adequate to review the alleged claim of error" and "the claim is of constitutional magnitude alleging the violation of a fundamental right." *Id*., 239-40.

As for the merits of the *Doyle* claim, the Appellate Court concluded that:

- "*it is clear* that the two questions, in which the state referred to the trial as the 'first time' that the other hikers were mentioned, *pertained to the [petitioner's] March 31, 2014* pre-*Miranda* interview." *Id.*, 464;
- "the state's questions *clearly* focused on the pre-*Miranda* interview." *Id*., 464.

(Emphasis added.) *State v. Palumbo*, supra, 464, at App. 11a. See also *id*., 465, at App. 12a (We, therefore, conclude that the [petitioner] failed to demonstrate than an alleged constitutional violation existed"); *id*., 467, at App. 13a ("the first two questions did not violate *Doyle*").

With respect to the third question ("And between March 31 of 2014 and your arrest in September in Montville and in November in—in Danielson, you never told anybody about that?"), the Appellate Court held that "[e]ven if we *assume without deciding that*

the last question was improper, we determine that it did not deprive the [petitioner] of his due process right to a fair trial." (Emphasis added.) *State v. Palumbo, supra*, 467, at App. 14a. Since the Appellate Court had found that "the first two questions did not violate *Doyle*," the prosecutorial impropriety/due process analysis was based *solely* on the third question. *Id.,* 467, at App. 14a. See also *id.*, 469, at App. 16a (no violation of due process since "the claimed impropriety—one question—was objected to and the objection was sustained before the question was answered").

The petitioner sought reconsideration of the *Doyle* issue in the Appellate Court. After his motion for reconsideration was denied, see App. 17a, he was unsuccessful in obtaining certification to appeal to the Connecticut Supreme Court. See App. 18a–19a.

REASONS FOR GRANTING THE WRIT

The petitioner recognizes that a petition for a writ of certiorari is "rarely granted when the asserted error consists of . . . the misapplication of a properly stated rule of law." Sup. Ct. Rule 10. Still, when a state appellate tribunal misapplies a legal doctrine as well established as *Doyle v. Ohio*, it suggests not only that the decision in the particular case was flawed, but also that Connecticut citizens are not receiving the full measure of constitutional protection that *Doyle* was intended to provide.

In *Doyle*, this Court held that "the use for impeachment purposes of [a defendant's] silence, at the time of arrest and *after receiving Miranda* warnings, violated the Due Process Clause of the Fourteenth Amendment." (Emphasis added.) *Id*., 619. See *Anderson v. Charles*, 447 U.S. 404, 408 (1980) (per curiam) ("*Doyle* bars the use against a criminal defendant of silence maintained after receipt of governmental assur-

ances."); *Wainwright v. Greenfield*, 474 U.S. 284, 292 (1986) ("The point of the *Doyle* holding is that it is fundamentally unfair to promise an arrested person that his silence will not be used against him and thereafter to breach that promise by using the silence to impeach his trial testimony."); *Brecht v. Abrahamson*, 507 U.S. 619, 629 (1993) ("Under the rationale of *Doyle*, due process is violated whenever the prosecution uses for impeachment purposes a defendant's post-*Miranda* silence").

Ultimately, *Doyle* is a time-sensitive constitutional doctrine. *Prior* to the receipt of *Miranda* warnings, a defendant's silence ordinarily is fair game for cross-examination. *After* the administration of warnings, a defendant's silence enjoys constitutional protection. Thus, the prosecution was free to cross-examine petitioner about what he said, or failed to say, *during* his pre-arrest and pre-*Miranda* interview on March 31, 2014. But after he was arrested and given *Miranda* warnings on September 12, 2014 and November 12, 2014, his silence *on and after* September 12—*up to and including the time of his testimony at trial*—was immune from cross-examination.

Doyle violations often take a classic form. Typically, a prosecutor will violate *Doyle* by asking a defendant, on cross-examination, if this is "the first time" the defendant has revealed an exculpatory story. See, e.g., *United States v. Kallin*, 50 F.3d 689, 692 n. 3 (9th Cir. 1995) (*Doyle* error included prosecutor's questions that "this is *the first time* that you have told an entire story explaining how and why it is that you're innocent. Isn't that correct"; "But in all the time since this matter was undertaken, this is *the first time* you've told a comprehensive story indicating that you are innocent. Isn't that right?") (Emphasis added.); *State v. Brunetti*,

279 Conn. 39, 83-86 (2006) (*Doyle* violated by questions that included "[O]ther than your lawyer, could you please tell. . . the jury *when is the first time* that you told someone in authority, like a judge, a prosecutor or a police officer, this story about your sweatpants being dipped in blood?" and "Now . . . you say *the first time that you said this* was in this courtroom. When in this courtroom was *the first time* this was said?") (Emphasis added.), cert. denied, 549 U.S. 1212 (2007)); *State v. Furlong*, 690 P.2d 986, 988-89 (Mont. 1984) (*Doyle* error included question, "Is this *the first time* you have told this story to anyone, Mr. Furlong?") (Emphasis added.); *Shabazz v. State*, 928 So.2d 1267, 1268-69 (Fla. Dist. Ct. App. 2006) (*Doyle* error based on a single improper question: "This is *the first time* you've told your version of the events, right here to this jury, you've never told it to anybody else before, have you?") (Emphasis added.).

The Connecticut Appellate Court's conclusion that the two "first time" questions "pertained to" and "clearly focused on the pre-*Miranda* interview," is plainly incorrect. To be sure, the prosecutor could *permissibly* cross-examine the petitioner at trial about what he told the police and what he failed to tell the police at his March 31, 2014 interview. In fact, those permissible questions included:

> (1) "You didn't tell the police that when you talked to them."
>
> (2) "And you never thought to *mention to them* that there were a bunch of other people around on this hike?"
>
> (3) "So you didn't *tell the officers* about that?

(Emphasis added.) *State v. Palumbo*, 461-62 n. 4, at App. 7a–8a. But when the prosecutor asked, "That's

the *first time* that *we're hearing* this. Isn't that correct?," and "And *this* is the *first time* that *we're hearing* that information?," the "we" was certainly not a reference to a police interview that occurred two years and eight months earlier. (Emphasis added.) The collective "we" was a contemporaneous reference to everyone *then* in the courtroom, including the jury, and the word "this" in one of the questions emphasized that the prosecutor was referring to the present, not the past.[5] Certiorari is therefore warranted because the Connecticut Appellate Court failed to recognize two patent *Doyle* violations.

If there was any residual doubt about the intended purpose and effect of the "first time" questions, that doubt was eliminated by the prosecutor's subsequent *attempt* to violate *Doyle*. For unknown reasons, however, the Appellate Court was unwilling to affirmatively characterize the third question as being "improper"—the Appellate Court just "assume[d], solely for the sake of argument, that the prosecutor's question was improper," and noted that "[o]ur opinion should not be understood to suggest that the prosecutor committed impropriety *at any time* during her questioning." (Emphasis added.) *State v. Palumbo*, 467 n. 6, at App. 14a. Yet that statement seems to ignore this Court's decision in *Greer v. Miller*, 483 U.S. 756 (1987).

In *Greer*, a prosecutor asked the defendant the following question: "Why didn't you tell this [exculpatory] story to anybody when you got arrested?" *Id.*,759.

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[5] Definitions of "this" include: "a (1): the person, thing, or idea that is present or near in place, time, or thought or that has just been mentioned"; "b: the present time; this time"; and "c: this place." *Merriam-Webster Unabridged Dictionary*, *available at* unabridged.merriam-webster.com (last visited March 2, 2020).

There was an immediate defense objection, which the trial judge sustained, and the jury was instructed to ignore the question. *Id*. This Court ultimately held that since the trial court "explicitly sustained an objection to the only question that touched upon Miller's postarrest silence," and "[n]o further questioning or argument with respect to Miller's silence occurred, and the court specifically advised the jury that it should disregard any questions to which an objection was sustained[,]" no actual *Doyle* violation occurred. *Id*., 764-65. Nevertheless, the Court made clear that simply *asking* about post-*Miranda* silence can be improper: "Although the prosecutor's question did not constitute a *Doyle* violation, the fact remains that the prosecutor *attempted to violate the rule of Doyle* by *asking an improper question in the presence of the jury*." (Emphasis added.) *Id*., 765. As explained in *Greer*, such a question can constitute prosecutorial misconduct that deprives a criminal defendant of the due process right to a fair trial. *Id*.

If petitioner is correct in his evaluation of the prosecutor's cross-examination, the petitioner was subjected to two completed *Doyle* violations and one attempted *Doyle* violation. Because the Connecticut Appellate Court failed to identify the two *Doyle* violations as such, it never addressed the question of whether they were harmless beyond a reasonable doubt. See *Brecht v. Abrahamson*, supra, 629-30, 635-36 (constitutional harmless error rule of *Chapman v. California*, 386 U.S. 18 (1967) applies to *Doyle* error on direct review).[6]

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[6] For purposes of this petition, there is no need to fully address the question of harm. Petitioner will simply note that Connecticut courts frequently have observed that "a sexual assault case lacking physical evidence is not particularly strong, especially

Nor did the Appellate Court ever consider whether, or to what extent, the actual *Doyle* violations may have altered its analysis of the petitioner's prosecutorial impropriety/due process claim.[7] Accordingly, it presumably would be necessary for this Court (or for the Connecticut Appellate Court on remand), to assess the impact of the errors.

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when the victim is a minor." *State v. Ritrovato*, 280 Conn. 36, 57 (2006); *State v. A.M.*, 324 Conn. 190, 213 (2016) (quoting same); *State v. Maguire*, 310 Conn. 535, 561 (2013) (same). Here, the Appellate Court stated that "[b]ecause there was no physical evidence and the state's case rested on the victim's testimony, which the defendant, in part, corroborated, we cannot conclude that the state's case was particularly strong." *State v. Palumbo*, supra, 468, at App. 15a.

[7] It is well settled in Connecticut that if a reviewing court determines that a prosecutorial impropriety has occurred, the court "must examine whether that impropriety, or the *cumulative effect of multiple improprieties*, deprived the defendant of his due process right to a fair trial." (Emphasis added.) *State v. Bell*, 283 Conn. 748, 760 (2007); *State v. Jones*, 320 Conn. 22, 34 (2015); *State v. Weatherspoon*, 332 Conn. 531, 555-56 (2019). Ordinarily, "the burden is on the defendant to show, not only that the [improprieties] were improper, but also that, considered in light of the whole trial, the improprieties were so egregious that they amounted to a denial of due process." *State v. Payne*, 303 Conn. 538, 562-63 (2012). However, "if the defendant raises a claim that the prosecutorial improprieties *infringed a specifically enumerated constitutional right*, *such as the fifth amendment right to remain silent* or the sixth amendment right to confront one's accusers, and the defendant meets his burden of establishing the constitutional violation, *the burden is then on the state to prove that the impropriety was harmless beyond a reasonable doubt*." (Emphasis added.) *Id.*, 563; *State v. Campbell*, 328 Conn. 444, 542 (2018); *State v. A.M.*, 324 Conn. 190, 199 (2016).

CONCLUSION

For all of the foregoing reasons, a writ of certiorari should issue to review the judgment and opinion of the Connecticut Appellate Court.

Respectfully submitted,

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March 12, 2020

APPENDIX

APPENDIX A

APPELLATE COURT
STATE OF CONNECTICUT

AC 41509

STATE OF CONNECTICUT

v.

JEFFREY TODD PALUMBO

DiPentima, C. J., and Alvord and Eveleigh, Js.

October 8, 2019

Syllabus

Convicted of the crimes of sexual assault in the fourth degree, sexual assault in the first degree, and risk of injury to a child in connection with his alleged sexual abuse of the minor victim, the defendant appealed. Although the defendant's conviction related to two incidents involving the minor victim, during his trial there was testimony relating to two other alleged incidents of sexual abuse, one of which occurred while the defendant and the victim were hiking alone at a state park. After the defendant testified at trial that, during the hike, there were other people around, the prosecutor asked him a series of questions that focused on whether he previously had told the police during an interview that there were other people around during the hike, and remarked that this was the first time that they were hearing about that information. On

appeal, the defendant claimed, for the first time, that the questions referring to the trial as being the first time that the defendant mentioned that other people were in the same area during the hike violated his constitutional right to remain silent pursuant to *Doyle v. Ohio* (426 U.S. 610) by introducing evidence of his post-Miranda silence. Specifically, he claimed that the questions focused on his silence after he was arrested and received his *Miranda* warnings and, therefore, that his post-*Miranda* silence was used as evidence of guilt. *Held:*

1. The defendant's unpreserved claim that his constitutional right to remain silent pursuant to Doyle was violated was unavailing; it was clear from the record that the questions referring to the trial as the first time that the other hikers were mentioned pertained to the defendant's pre-Miranda interview that occurred on March 31, 2014, and, therefore, the defendant having failed to demonstrate that an alleged constitutional violation existed, his unpreserved claim failed under the third prong of the test set forth in State v. Golding (213 Conn 233).

2. The defendant could not prevail on his claim that because the prosecutor's questions sought to elicit evidence of his post-Miranda silence, they amounted to prosecutorial impropriety that violated his due process rights: this court has determined that certain of the questions did not violate *Doyle* and the defendant did not argue how those questions would otherwise amount to prosecutorial impropriety, and with respect to the prosecutor's question of whether the defendant told anyone about the presence of the other hikers in the time period between a pre-*Miranda* interview and his arrests in September and November, 2014, even if that question was improper, it did not deprive the

defendant of his due process right to a fair trial, as the claimed impropriety was not pervasive throughout the trial and was confined to a single question that related to uncharged misconduct, it was not central to a critical issue in the case or the defendant's theory of defense, defense counsel objected to the question before it was answered and the objection was sustained, the court's general instructions were sufficiently curative, and the state's case was not particularly strong.

Argued March 4—officially released October 8, 2019

PROCEDURAL HISTORY

Substitute information, in the first case, charging the defendant with the crimes of sexual assault in the fourth degree and risk of injury to a child, brought to the Superior Court in the judicial district of New London, and substitute information, in the second case, charging the defendant with the crimes of sexual assault in the first degree and risk of injury to a child, brought to the Superior Court in the judicial district of Windham, geographical area number eleven, where the court, *Seeley, J.,* granted the state's motion for joinder; thereafter, the matter was tried to the jury; verdicts and judgments of guilty, from which the defendant appealed. *Affirmed.*

Richard Emanuel, for the appellant (defendant).

Nancy L. Chupak, senior assistant state's attorney, with whom, on the brief, were *Anne F. Mahoney,* state's attorney, and *Marissa Goldberg,* assistant state's attorney, for the appellee (state).

OPINION

ALVORD, J. The defendant, Jeffrey Todd Palumbo, appeals from the judgments of conviction, rendered following a jury trial, of sexual assault in the first degree in violation of General Statutes § 53a-70 (a) (2), sexual assault in the fourth degree in violation of General Statutes § 53a-73a (a) (1) (A), and two counts of risk of injury to a child in violation of General Statutes § 53–21 (a) (2). On appeal, the defendant claims, pursuant to *Doyle v. Ohio,* 426 U.S. 610, 619, 96 S. Ct. 2240, 49 L. Ed. 2d 91 (1976), that the state (1) violated his constitutional right to remain silent by introducing evidence of his post-Miranda[1] silence and (2) engaged in prosecutorial impropriety by attempting to elicit evidence of his post-Miranda silence.[2] We affirm the judgments of the trial court.

The following facts, which the jury reasonably could have found, and procedural history are relevant to our resolution of this appeal. The defendant started dating the victim's mother, K, on August 8, 2008, when the

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[1] See *Miranda v. Arizona,* 384 U.S. 436, 478-79, 86 S. Ct 1602, 16 L. Ed. 2d 694 (1966).

[2] The defendant has raised three additional issues on appeal, claiming that (1) the trial court improperly denied his motions for judgments of acquittal because of insufficient evidence of penetration to support the conviction for sexual assault in the first degree or, alternatively, because the conviction was against the weight of the evidence, (2) he was deprived of his due process rights as a result of prosecutorial impropriety because the state improperly elicited constancy of accusation evidence, which led to an erroneous jury instruction, and the state made comments in rebuttal that misstated evidence, related to the constancy of accusation evidence, and highlighted the defendant's interest in the case, and (3) that the trial court improperly joined his separate cases for trial. We carefully have considered the defendant's claims and conclude that they have no merit

victim was three.[3] The defendant moved into an apartment in Montville with K and the victim in March, 2009, when K became pregnant with the defendant's child. The defendant continued living there with K and the victim after their son, T, was born, and his older son from a previous relationship, D, moved in with K and the victim as well. The defendant moved out of K's apartment in May, 2012. However, the defendant still had contact with the victim because he and K shared custody of T, and the defendant and D would occasionally go to K's apartment to watch movies and play video games with K, T, and the victim.

K, T, and the victim also would visit the defendant and D at the defendant's apartment in Danielson. Sometimes K would leave the victim alone with the defendant while she ran errands. On one occasion at the defendant's apartment, the victim was in the defendant's bedroom lying down at the edge of his bed. The defendant told her to take her pants off and she did. She saw that the defendant's "front private went through a hole in his underwear." He told her to touch it. She testified that she did, that it felt "squishy," and that the defendant then touched his penis to her vagina, making "skin to skin" contact. The victim said that it hurt the middle of her vagina.

In December, 2013, the defendant and D went to K's apartment in Montville to watch movies and play video games. While K was outside smoking a cigarette, the victim was standing on the couch. The defendant put his hand inside the victim's pants and rubbed her

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[3] 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.

vagina over her underwear. She told him to stop, but he did not. She told him that she was going to tell her mother, and he responded that her mother would not believe her. When K returned, the victim told K that the defendant made her feel uncomfortable, and K told her to stay in K's bedroom and play on the computer.

When K learned from the victim's grandmother that the victim had told her cousin that she had been abused, K informed Nora Selinger, a school guidance counselor who the victim saw for counseling. After speaking with the victim, Selinger filed a report with the Department of Children and Families (department). The department then forwarded the report to the police.

On March 31, 2014, police officers went to the defendant's house and asked to talk to him about a case they were investigating. The defendant agreed to meet with the police at the police barracks where the police interviewed the defendant. The defendant did not receive *Miranda* warnings, and the interview was taped. On September 12, 2014, the defendant was given *Miranda* warnings and arrested on charges of sexual assault in the fourth degree and risk of injury to a child stemming from the December, 2013 incident at K's apartment in Montville. On November 12, 2014, he was given *Miranda* warnings and arrested on charges of sexual assault in the first degree and risk of injury to a child arising from his conduct in the bedroom of his apartment in Danielson. The two cases were consolidated for trial.

During the defendant's trial, there was testimony relating to two other alleged incidents when the defendant rubbed the victim's vagina over her underwear. The defendant was not charged for those incidents. One occurred at the defendant's apartment when K

was not there, and the other occurred when the defendant and the victim were hiking alone at a state park.

The defendant elected to testify. On cross-examination, the state played portions of his March 31, 2014 police interview and questioned him about the interview and the hiking incident. The defendant testified that, during the hike, there were other people around. The state then asked the defendant a series of questions that focused on whether the defendant previously had told the police that there were other people "around" during the hike. Specifically, the state asked: (1) "That's the first time that we're hearing this. Isn't that correct?"; (2) "And this is the first time that we're hearing that information?"; and (3) "[B]etween March 31st of 2014 and your arrest in September in Montville and in November in—in Danielson, you never told anybody about that?"[4] Defense counsel objected to the

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[4] The questions that the defendant claims constituted *Doyle* violations occurred during the following exchange:

"[The Prosecutor]: Okay. So only the two of you would know what happened out in—in the woods?

"[The Defendant]: Correct. There was a lot of other people there at the time, too, walking around hiking, too, so—

"[The Prosecutor]: You didn't tell the police that when you talked to them. "[The Defendant]: They didn't ask.

"[The Prosecutor]: *That's the first time that we're hearing this. Isn't that correct?*

"[The Defendant]: I do believe I—I don't—actually I don't know if I told them at the time or not. The fact is, is when we were walking around, there were other people there. The place was busy. It was in the middle of summer and it was Green Falls.

"[The Prosecutor]: *And this is the first time that we're hearing that information?*

"[The Defendant]: Nobody inquired previous to it.

"[The Prosecutor]: Well, you're in a two-hour interview with police officers and you have time to talk about other things, you talk about your vaporizer, you talk about your brewing at the beginning of the video?

"[The Defendant]: Yes, when inquired.

"[The Prosecutor]: And you never thought to mention to them that there were a bunch of other people around on this hike?

"[The Defendant]: Well, there's people walking. It's a hiking path at Green Falls. There was people camping there. As we were walking, we passed people, we had conversations with people. So, yes, there's other people, but nothing—again, nothing that I thought of, nothing out of the ordinary, nothing more than a hike, a normal hike.

"[The Prosecutor]: So when you're in an interview room with two police officers being accused of touching a child on a hike—

"[The Defendant]: Yeah.

"[The Prosecutor]: —alone, you didn't think it was helpful information that maybe there were other people around?

"[The Defendant]: I had stated that there were other people around in the beginning. I stated that I had asked a bunch of other people if they wanted to go for a hike, too.

"[The Prosecutor]: So they were back at the campsite?

"[The Defendant]: Those people were, yes.

"[The Prosecutor]: Right. So we're talking about when you were on the hike alone with [the victim].

"[The Defendant]: It just didn't cross my mind. There was people. You hike, you see people.

"[The Prosecutor]: Okay. And so you—so you—

"[The Defendant]: And there was nothing spe—yeah, I mean yeah, there was—

"[The Prosecutor]: So you didn't tell the officers about that?

"[The Defendant]: No. No.

"[The Prosecutor]: *And between March 31 of 2014 and your arrest in September in Montville and in November in—in Danielson, you never told anybody about that?*

last of these three questions, and the objection was sustained.

The jury found the defendant guilty of sexual assault in the first degree, sexual assault in the fourth degree, and two counts of risk of injury to a child. The court accepted the verdicts and sentenced the defendant to a total effective term of ten years mandatory incarceration followed by eight years of special parole. This appeal followed.

I

The defendant claims that the two questions, referring to the trial as being *the first time* that the defendant mentioned that other people were in the same area during the hike with the victim, violated his constitutional right to remain silent pursuant to *Doyle v. Ohio,* supra, 426 U.S. 610, by introducing evidence of the defendant's post-Miranda silence. Specifically, the defendant argues that the two questions focused on the defendant's silence after he was arrested and received his *Miranda* warnings, and therefore his post-Miranda silence was used as evidence of guilt. We disagree.

"In *Doyle [v. Ohio,* supra, 426 U.S. 610] . . . the United States Supreme Court held that the impeachment of a defendant through evidence of his silence following his arrest and receipt of *Miranda* warnings violates due process. . . . Likewise, our Supreme Court has recognized that it is also fundamentally unfair and

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"[Defense Counsel]: Objection, Your Honor.

"The Court: Send the jury out." (Emphasis added.)

When the jury returned, the court stated: "All right. I think when we broke there was an objection. That objection is sustained."

a deprivation of due process for the state to use evidence of the defendant's post-Miranda silence as affirmative proof of guilt . . . . *Miranda* warnings inform a person of his right to remain silent and assure him, at least implicitly, that his silence will not be used against him. . . . Because it is the *Miranda* warning itself that carries with it the promise of protection . . . the prosecution's use of [a defendant's] silence *prior* to the receipt of *Miranda* warnings does not violate due process. . . . Therefore, as a factual predicate to an alleged *Doyle* violation, the record must demonstrate that the defendant received a *Miranda* warning prior to the period of silence that was disclosed to the jury. . . . The defendant's claim raises a question of law over which our review is plenary." (Emphasis in original; internal quotation marks omitted.) *State v. Reddick,* 174 Conn. App. 536, 553, 166 A.3d 754, cert. denied, 327 Conn. 921, 171 A.3d 58 (2017), cert. denied, U.S., 138 S. Ct. 1027, 200 L. Ed. 2d 285 (2018).

The defendant acknowledges that he did not preserve his *Doyle* claim but asserts that it is reviewable under *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). 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. In the absence of any one of these

conditions, the defendant's claim will fail." (Emphasis in original; footnote omitted.) *State v. Golding,* supra, 239-40.

Upon our review of the record, it is clear that the two questions, in which the state referred to the trial as the "first time" that the other hikers were mentioned, pertained to the defendant's March 31, 2014 pre-*Miranda* interview. "[E]vidence of prearrest, and specifically pre-Miranda, silence is admissible to impeach the testimony of a defendant who testifies at trial, since the rule of *Doyle* . . . is predicated on the defendant's reliance on the implicit promise of the *Miranda* warnings." *State v. Angel T.,* 292 Conn. 262, 286 n.19, 973 A.2d 1207 (2009); see also *State v. Esposito,* 223 Conn. 299, 319, 613 A.2d 242 (1992) ("prosecution's use of silence prior to the receipt of *Miranda* warnings does not violate due process"). Because the state's questions clearly focused on the pre-Miranda interview, the present situation is distinguishable from the cases the defendant cites in support of his argument that the state's use of the term the "first time" amounts to a *Doyle* violation. See, e.g., *State v. Brunetti,* 279 Conn. 39, 4546, 83, 86, 901 A.2d 1 (2006), cert. denied, 549 U.S. 1212, 127 S. Ct. 1328, 167 L. Ed. 2d 85 (2007). In *Brunetti,* the defendant was given *Miranda* warnings during a police interview after becoming upset when he was questioned about reddish brown stains on certain clothing, and he provided a confession after receiving a *Miranda* warning. Id., 46. During the trial, the prosecutor asked: "[O]ther than your lawyer, could you please tell . . . the jury when is the first time that you told someone in authority, like a judge, a prosecutor or a police officer, this story about your sweatpants being dipped in blood?" Id., 83. Our Supreme Court concluded that the *Doyle* violation was harmless. Id., 86; see also *State v. Apostle,* 8 Conn.

App. 216, 220, 512 A.2d 947 (1986) (defendant gave written statement to police after receiving *Miranda* warnings; during final argument, prosecutor focused on defendant not returning to police to correct his statement), superseded by statute on other grounds as stated in *State v. Kulmac,* 230 Conn. 43, 58 n.12, 644 A.2d 887 (1994). We, therefore, conclude that the defendant failed to demonstrate that an alleged constitutional violation existed, and thus his unpreserved *Doyle* claim fails the third prong of *Golding*.

II

The defendant additionally claims that the state's three questions sought to elicit evidence of the defendant's post-Miranda silence and, therefore, amounted to prosecutorial impropriety[5] that violated his due process rights. We disagree.

"In analyzing claims of prosecutorial impropriety, we engage in a two step analytical process. . . . We first examine whether prosecutorial impropriety occurred.

. . . Second, if an impropriety exists, we then examine whether it deprived the defendant of his due process right to a fair trial. . . . [T]he defendant has the burden to show both that the prosecutor's conduct was improper and that it caused prejudice to his defense. . . .

"In determining whether the defendant was deprived of his due process right to a fair trial, we are guided by the factors enumerated by this court in

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[5] The defendant raises other instances of prosecutorial impropriety, but as we stated in footnote 2 of this opinion, we conclude that the remainder of the defendant's prosecutorial impropriety claim is without merit. We, therefore, address only the claimed *Doyle* violations that the defendant argues are instances of prosecutorial impropriety.

State v. Williams, 204 Conn. 523, 540, 529 A.2d 653 (1987). These factors include [1] the extent to which the [impropriety] was invited by defense conduct or argument, [2] the severity of the [impropriety], [3] the frequency of the [impropriety], [4] the centrality of the [impropriety] to the critical issues in the case, [5] the strength of the curative measures adopted, and [6] the strength of the state's case. . . . [A] reviewing court must apply the Williams factors to the entire trial, because there is no way to determine whether the defendant was deprived of his right to a fair trial unless the [impropriety] is viewed in light of the entire trial. . . . The question of whether the defendant has been prejudiced by prosecutorial [impropriety] . . . depends on whether there is a reasonable likelihood that the jury's verdict would have been different absent the sum total of the improprieties." (Citations omitted; internal quotation marks omitted.) State v. Sinclair, 332 Conn. 204, 236-37, 210 A.3d 509 (2019).

The defendant argues that the state's three questions—"That's the first time that we're hearing this. Isn't that correct?"; "And this is the first time that we're hearing that information?"; and "[B]etween March 31st of 2014 and your arrest in September in Montville and in November in—in Danielson, you never told anybody about that?"—amounted to prosecutorial impropriety because the state attempted to elicit evidence of the defendant's post-Miranda silence.

As we discussed in part I of this opinion, the first two questions did not violate *Doyle* and the defendant does not argue how the questions would otherwise amount to prosecutorial impropriety. Therefore, we address only the defendant's arguments as to the state's question of whether the defendant told anybody about the presence of other hikers in the time period

between the pre-Miranda interview and the defendant's arrests in September and November, 2014. The defendant argues that this last question was improper because it includes a post-Miranda time period of two months between the defendant's September and November arrests.

Even if we assume without deciding that the last question was improper, we determine that it did not deprive the defendant of his due process right to a fair trial.[6] See *State v. Baltas,* 311 Conn. 786, 827, 91 A.3d 384 (2014) (reaching second step of prosecutorial impropriety analysis by assuming, arguendo, that prosecutor's remarks were improper); see also *State v. Ross,* 151 Conn. App. 687, 699, 95 A.3d 1208, cert. denied, 314 Conn. 926, 101 A.3d 271 (2014).

Under our review of the *Williams* factors, we first note that the claimed impropriety was not invited by the defense. Additionally. we conclude that the factors of severity, frequency, centrality of the claimed impropriety, and strength of the curative measures also weigh in favor of the state. In the present case, the claimed impropriety was not pervasive throughout the trial but was confined to a single question that related to uncharged misconduct, and was not central to a critical issue in the defendant's case or his theory of defense. Defense counsel objected to the question

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[6] Our opinion should not be understood to suggest that the prosecutor committed impropriety at any time during her questioning. In *State v. Papantoniou,* 185 Conn. App. 93, 111, 196 A.3d 839, cert. denied, 330 Conn. 948, 196 A.3d 326 (2018), this court explained: "The two steps of [our] analysis are separate and distinct, and we may reject the claim if we conclude that the defendant has failed to establish either prong." (Internal quotation marks omitted.) Accordingly, like in *Papantoniou,* we simply assume, solely for the sake of argument, that the prosecutor's question was improper. See id., 112 n.19.

before it was answered, the objection was sustained, and the court had previously instructed the jury regarding sustained objections.[7] Although defense counsel failed to request a specific curative instruction, the court's general instruction directed the jury's approach to sustained objections, curing any impropriety. See *State v. A. M.,* 324 Conn. 190, 207, 152 A.3d 49 (2016) ("in nearly all cases where defense counsel fails to object to and request a specific curative instruction in response to a prosecutorial impropriety, especially an impropriety that we do not consider to be particularly egregious, and the court's general jury instruction addresses that impropriety, we have held that the court's general instruction cures the impropriety").

Finally, we consider the sixth factor, namely the strength of the state's case. Because there was no physical evidence and the state's case relied on the victim's testimony, which the defendant, in part, corroborated, we cannot conclude that the state's case was particularly strong. Nevertheless, our Supreme Court has "never stated that the state's evidence must have been overwhelming in order to support a conclusion that prosecutorial [impropriety] did not deprive the defendant of a fair trial." (Internal quotation marks omitted.) *State v. Stevenson,* 269 Conn. 563, 596, 849 A.2d 626 (2004).

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[7] On the first day of trial, the court gave the jury the following instruction: "If I sustain [an] objection, you will not hear an answer to the question and you should not wonder why the objection was made and you should not speculate as to what an answer might have been." The court also instructed the jury at the close of evidence that "any question or objection by a lawyer is not evidence . . . testimony that has been excluded or stricken is not evidence and must be disregarded . . ."

Under the present circumstances, in which the claimed impropriety—one question—was objected to and the objection was sustained before the question was answered, and the court's general instructions were sufficiently curative, we conclude that the defendant was not denied his due process rights and that his prosecutorial impropriety claim fails.

The judgments are affirmed.

In this opinion the other judges concurred.

APPENDIX B

APPELLATE COURT
STATE OF CONNECTICUT

AC 41509

STATE OF CONNECTICUT

v.

JEFFREY TODD PALUMBO

October 30, 2019

ORDER

THE MOTION OF THE DEFENDANT-APPELLANT, FILED OCTOBER 18, 2019, FOR RECONSIDERATION, HAVING BEEN PRESENTED TO THE COURT, IT IS HEREBY ORDERED DENIED.

BY THE COURT,

/S/

MAURILIO R. AMORIM
ASSISTANT CLERK-APPELLATE

NOTICE SENT: OCTOBER 30, 2019
COUNSEL OF RECORD
HON. HOPE SEELEY
CLERK, SUPERIOR COURT, W11DCR140125781T
REPORTER OF JUDICIAL DECISIONS

APPENDIX C

SUPREME COURT
STATE OF CONNECTICUT

PSC 190280

STATE OF CONNECTICUT

v.

JEFFREY TODD PALUMBO

Decided December 12, 2019

The defendant's petition for certification to appeal from the Appellate Court, 193 Conn. App. 457 (AC 41509), is denied.

Richard Emanuel, in support of the petition.

Nancy L. Chupak, senior assistant state's attorney, in opposition.

APPENDIX D

SUPREME COURT
STATE OF CONNECTICUT

PSC 190280

STATE OF CONNECTICUT

v.

JEFFREY TODD PALUMBO

January 14, 2020

ORDER

THE MOTION OF THE DEFENDANT, FILED DECEMBER 23, 2019, FOR RECONSIDERATION OF ORDER DENYING DEFENDANT'S PETITION FOR CERTIFICATION, HAVING BEEN PRESENTED TO THE COURT, IT IS HEREBY ORDERED DENIED.

BY THE COURT,

/S/

DANIELLE MASEK
ASSISTANT CLERK-APPELLATE

NOTICE SENT: JANUARY 14, 2020
COUNSEL OF RECORD
HON. HOPE SEELEY
CLERK, SUPERIOR COURT, W11D CR14 0125781T