No. 19-_____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 2019

MARCUS H,

Petitioner

v.

STATE OF CONNECTICUT,

Respondent

ON PETITION FOR A WRIT OF CERTIORARI
TO THE
CONNECTICUT APPELLATE COURT

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

CONRAD OST SEIFERT, ESQ.
Appointed Counsel of Record for the Petitioner
SEIFERT & HOGAN
Box 576, Halls Road
Old Lyme, CT 06371
Telephone: (860) 434-2097
Fax: (860)-434-3657
conradlaw@aol.com

September 23, 2019

INDEX TO APPENDIX

STATE OF CONNECTICUT *v.* MARCUS H.*
(AC 39379)
(AC 40796)

Prescott, Bright and Norcott, Js.

Syllabus

Convicted, after a jury trial, of the crimes of assault in the second degree with a motor vehicle, risk of injury to a child, reckless endangerment in the first degree, reckless driving, operating a motor vehicle while under the influence of intoxicating liquor, interfering with an officer and increasing speed in an attempt to escape or elude a police officer, the defendant appealed to this court. During jury selection, the defendant moved for a continuance to replace his private attorney, W, with another private attorney. The trial court denied the motion, and the defendant requested to represent himself. After concluding that the defendant knowingly and voluntarily had waived his right to counsel, the court granted his request and appointed W as the defendant's standby counsel. The defendant thereafter filed an application for a public defender, but the public defender's office concluded that he was not eligible for its services. Following a hearing, the trial court denied the defendant's application for a public defender, implicitly finding that the defendant was not indigent and, thus, that he was not entitled to a public defender. The defendant thereafter proceeded with the trial self-represented. After several days of trial, the state asked the court to raise the defendant's bond because he had failed to appear for trial on a previous day. The court raised the defendant's bond, and when he was unable to post it, the defendant was taken into custody by the judicial marshals and was placed in leg shackles. After a recess, the defendant did not request that the court order that his shackles be removed for the trial and, when the trial resumed, he was seated in a manner in which his shackles were not visible to the jury. The jury, however, briefly could see that he was wearing shackles on his ankles when he stood up to approach a witness. The jury was then immediately excused at the prosecutor's request, and the court ordered the judicial marshals to remove the defendant's shackles. After the jury returned, it was instructed by the court not to consider the shackles in its deliberations. On the defendant's appeal to this court, *held*:

1. The defendant could not prevail on his claim that the trial court violated his constitutional right to counsel and, therefore, to due process, by denying his application for the appointment of a public defender; that

* In accordance with our policy of protecting the privacy interests of the victims of the crime of risk of injury to a child, we decline to identify the victims or others through whom the victims' identities may be ascertained. See General Statutes § 54-86e.

court's implicit finding that the defendant was not indigent was not clearly erroneous and was supported by the evidence in the record, which indicated that the defendant had the financial ability at the time of his request for a public defender to secure competent legal representation, as he had obtained a private attorney, W, who was ready, willing and able to continue to represent him throughout the trial, and the trial court, therefore, properly denied the defendant's request for the appointment of a public defender.

2. The defendant's unpreserved claim that the trial court violated his constitutional right to due process by failing to order, sua sponte, a judicial marshal to remove his shackles during the trial was unavailing, the defendant having failed to demonstrate the existence of a constitutional violation that deprived him of a fair trial: the defendant did not have a constitutional right that obligated the trial court to inquire as to whether he was shackled and to order, sua sponte, that his shackles be removed, as the defendant's failure to object to being tried before the jury in shackles was sufficient to negate the compulsion necessary to establish a constitutional violation, and his request for the judicial marshals to remove his shackles was inadequate to alert the court that he wanted them to be removed; moreover, the defendant was not compelled to stand trial before the jury while visibly shackled, as he had the option to remain seated and to request that a marshal bring the court, or any witnesses, his documents, but, instead, he asked permission to approach the witness, voluntarily exposing his shackles to the jury, even though he obviously was aware that he was shackled and that the jury would be able to observe the shackles, and this court was not persuaded that the jury's brief exposure to the defendant in leg shackles, together with the trial court's curative instruction, denied the defendant of a fair trial; furthermore, the defendant's reliance on the rule of practice (§ 42-46) that requires the judicial authority to employ reasonable efforts to conceal such restraints from the view of the jurors was unavailing, as the rules of practice are not a source of constitutional rights for which the failure to follow establishes a constitutional violation.

Argued January 14—officially released June 4, 2019

Procedural History

Two part substitute information charging the defendant, in the first part, with two counts each of the crimes of risk of injury to a child and reckless endangerment in the first degree, and with the crimes of assault in the second degree with a motor vehicle, reckless driving, operating a motor vehicle while under the influence of intoxicating liquor or drugs, operating a motor vehicle with an elevated blood alcohol content, interfering with an officer and increasing speed in an attempt to escape or elude a police officer, and, in the second part, with

previously having been convicted of operating a motor vehicle while under the influence of intoxicating liquor or drugs, brought to the Superior Court in the judicial district of New London, geographical area number ten, where the court, *Jongbloed, J.*, denied the defendant's application for the appointment of a public defender; thereafter, the first part of the information was tried to the jury; verdict and judgment of guilty; subsequently, the defendant was presented to the court on a plea of guilty to the second part of the information; thereafter, the court vacated the conviction of operating a motor vehicle with an elevated blood alcohol content, and the defendant appealed to this court; subsequently, the court, *Jongbloed, J.*, issued an articulation of its decision. *Appeal dismissed in AC 39379*; *affirmed.*

Lisa J. Steele, assigned counsel, for the appellant (defendant).

Jennifer F. Miller, assistant state's attorney, with whom, on the brief, were, *Michael L. Regan*, state's attorney, and *Sarah Bowman*, assistant state's attorney, for the appellee (state).

Opinion

PRESCOTT, J. The defendant, Marcus H., appeals from the judgment of conviction, rendered after a jury trial, of assault in the second degree with a motor vehicle in violation of General Statutes § 53a-60d, two counts of risk of injury to a child in violation of General Statutes § 53-21 (a) (1), two counts of reckless endangerment in the first degree in violation of General Statutes § 53a-63, reckless driving in violation of General Statutes § 14-222, operating a motor vehicle while under the influence of intoxicating liquor in violation of General Statutes § 14-227a (a) (1), operating a motor vehicle with an elevated blood alcohol content in violation of General Statutes § 14-227a (a) (2),[1] interfering with an

[1] The court vacated the conviction of operating a motor vehicle with an elevated blood alcohol content in violation of § 14-227a (a) (2), and sentenced

officer in violation of General Statutes § 53a-167a, and increasing speed in an attempt to escape or elude a police officer in violation of General Statutes § 14-223 (b). The defendant claims on appeal that the court improperly (1) violated his constitutional right to counsel by denying his application for the appointment of a public defender and (2) violated his constitutional right to due process when it did not order, sua sponte, a judicial marshal to remove his leg shackles during the trial.[2] We are not persuaded by the defendant's claims and, accordingly, affirm the judgment of conviction.[3]

The jury reasonably could have found the following facts. In the early morning of May 25, 2014, a motorist driving behind the defendant observed that his car

the defendant on the conviction of operating a motor vehicle while under the influence of intoxicating liquor in violation of § 14-227a (a) (1). See *State* v. *Lopez*, 177 Conn. App. 651, 668–69, 173 A.3d 485 (2017) ("[t]he legislative history reflects that the two subdivisions of § 14-227a (a) describe alternative means for committing the same offense of illegally operating a motor vehicle while under the influence of intoxicating liquor or drugs"), cert. denied, 327 Conn. 989, 175 A.3d 563 (2017).

[2] The petitioner appears to predicate his claims on the fifth, sixth, and fourteenth amendments to the United States constitution and article first, § 8, of the Connecticut constitution. Because he has not provided an independent analysis of his state constitutional claims under *State* v. *Geisler*, 222 Conn. 672, 684–86, 610 A.2d 1225 (1992), we deem them abandoned. See, e.g., *Barros* v. *Barros*, 309 Conn. 499, 507 n.9, 72 A.3d 367 (2013) ("we will not entertain a state constitutional claim unless the defendant has provided an independent analysis under the particular provisions of the state constitution at issue" [internal quotation marks omitted]). Accordingly, we analyze the defendant's claims under the federal constitution only.

[3] The defendant filed AC 39379 before the imposition of his sentence. Practice Book § 61-6 (a) (1) provides in relevant part: "The defendant [in a criminal case] may appeal from a conviction for an offense when the conviction has become a final judgment. The conviction becomes a final judgment after the imposition of sentence. . . ." See also *State* v. *Fielding*, 296 Conn. 26, 36, 994 A.2d 96 (2010) ("[i]n a criminal proceeding, there is no final judgment until the imposition of a sentence" [internal quotation marks omitted]). Accordingly, we dismiss the appeal in AC 39379 for lack of a final judgment. In any event, all of the issues that were raised in AC 39379 are addressed in this opinion.

remained stopped through two cycles of a stoplight. The motorist pulled over, exited her car, and approached the passenger side of the defendant's car. She observed the defendant sleeping or unconscious in the driver seat and two young girls in car seats in the back of the car. The motorist woke up the defendant, who then drove off.

Due to concern for the children's safety, the motorist called the police and informed them that she thought that the defendant was intoxicated. On the basis of the information provided by the motorist, the police station issued a "be on the lookout" report over their radio system for a black Acura with a black male operator and two females in the back seat. Officer Jason Pudvah saw a car that matched the description from the report idling at a nearby gas station. Pudvah approached the car and observed the defendant slumped over in the driver's seat and his two and four year old daughters in the backseat. Pudvah knocked on the window and spoke with the defendant. After requesting the defendant's information, Pudvah returned to his vehicle. While Pudvah was speaking with police dispatch, the defendant drove off at a high rate of speed.

Pudvah initially pursued the defendant but stopped due to fear for the children's safety and in the hope that the defendant would slow down. Further down the road, the defendant lost control of his car and crashed into a telephone pole. The car became airborne and landed upside down in a residential swimming pool. As a result of the accident, the defendant's younger daughter suffered serious injuries to her arm and his older daughter sustained an ankle injury.

After the trial, during which the defendant represented himself, a jury found the defendant guilty of all charges, and the court rendered judgment in accordance with the verdict. Thereafter, the defendant pleaded

guilty to being a subsequent offender to operating a motor vehicle while under the influence of intoxicating liquor in violation of § 14-227a (g) (2). The trial court, *Jongbloed, J.*, sentenced the defendant to a total effective term of twenty-three years of incarceration, execution suspended after fourteen and one-half years, followed by five years of probation with special conditions. This appeal followed. Additional facts will be set forth as necessary.

I

The defendant claims that the trial court violated his constitutional right to counsel and, therefore, to due process, by denying his application for the appointment of a public defender. We disagree.

The following additional facts are relevant to this claim. On the first day of jury selection on February 18, 2016,[4] the defendant requested a continuance to replace his private attorney, Attorney John Williams, with another private attorney. Specifically, he claimed that he had a dispute with Attorney Williams regarding payment of attorney's fees, and he did not believe that Attorney Williams would represent him properly. Attorney Williams informed the court that he had "told [the defendant] expressly and more than once that under no circumstances would his [lack of payment] in any way, shape, or form affect [his] commitment to [the defendant]." The court denied the motion for a continuance and stated that "[Attorney] Williams is going to honor his professional obligations under all circumstances and represent [the defendant] to the best of his ability."

[4] Jury selection originally occurred on October 14 and 15, 2015. On November 16, 2015, however, the court granted a motion for a competency evaluation of the defendant. On the basis of the evaluation, the court found that the defendant was competent to stand trial. Due to the evaluation, the trial was postponed and a second jury selection occurred on February 18, 19, and 22, 2016.

After the court denied the motion for a continuance, the defendant requested to represent himself. The court canvassed the defendant regarding his decision to represent himself, including inquiring as to whether he understood the dangers of self-representation. After concluding that the defendant knowingly and voluntarily waived his right to counsel, the court granted his request. The court then appointed Attorney Williams as the defendant's standby counsel. Jury selection thereafter commenced, with the defendant representing himself. That afternoon, the defendant applied for a public defender.

The next day, the court held a hearing on the defendant's request for appointment of a public defender. The assistant state's attorney, the defendant, Attorney Williams, and Attorney Sean Kelly from the public defender's office were present at the hearing. Attorney Kelly stated that, after reviewing the defendant's application, the defendant was not eligible for their services and that the Office of the Public Defender did not seek to be appointed in the case.

The defendant argued that he was financially eligible for the services of a public defender. Specifically, he argued that, although he was able to post bonds and had retained private counsel in the past, his financial situation had changed so that he had "the right to free counsel . . . on the state's dollar." Attorney Kelly stated that the public defender's office considers many factors when making a decision regarding a defendant's eligibility, including whether the defendant is receiving support from others. After evaluating the defendant's application, the public defender's office concluded that his circumstances did not warrant appointment of a public defender.

The defendant initially posted a $25,000 surety bond. His bond subsequently was increased to a $75,000

surety bond, which he also posted. Therefore, the defendant was not in custody and was living with his mother at the time he applied for a public defender. Attorney Kelly noted that the defendant's ability to post bond and to obtain private counsel "shows a pattern where, if there's money needed, money comes . . . ." The defendant himself stated that the money from his initial payment to Attorney Williams came from his mother. Attorney Kelly also noted that this was the second private attorney the defendant had retained in the case and that the defendant had posted significant bonds on two prior occasions. These facts taken together led the public defender's office to conclude that the defendant was not indigent.

The defendant responded to Attorney Kelly by stating that he still owed money to both of his private attorneys and had balances on both bonds. Finally, he restated that he believed that Attorney Williams, who was present and available to represent him, would be ineffective. At the conclusion of the hearing, the trial court denied the defendant's request. In denying the defendant's request, the court stated: "Under all the circumstances, [the public defender's office is] not seeking to be appointed. I am not going to appoint the public defender's office to represent you. We'll continue your appearance pro se with standby counsel by Attorney Williams."[5] The defendant continued to trial representing himself, with the assistance of Attorney Williams as standby counsel.

We begin with the relevant law and standard of review that govern this claim. Practice Book § 37-6 (a) provides in relevant part: "If the judicial authority determines

[5] Although the court did not explain why it concluded that the defendant was not entitled to a public defender, it appears that, on the basis of the arguments presented to it, it implicitly found that the defendant was not indigent.

after investigation by the public defender that the defendant is indigent, the judicial authority may designate the public defender or a special public defender to represent the defendant . . . . If the public defender or his or her office determines that a defendant is not eligible to receive the services of a public defender, the defendant may appeal the public defender's decision to the judicial authority in accordance with General Statutes § 51-297 (g). The judicial authority may not appoint the public defender unless the judicial authority finds the defendant indigent following such appeal. . . ."

Our Supreme Court in *State* v. *Henderson*, 307 Conn. 533, 540–41, 55 A.3d 291 (2012), stated: "[T]he trial court's assessment of the defendant's offer of proof pertaining to whether he was indigent and was, therefore, eligible for state funded . . . assistance, is a factual determination subject to a clearly erroneous standard of review. . . . A finding of fact is clearly erroneous when there is no evidence in the record to support it . . . or when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. . . .

"It is the duty of the state to provide adequate means to assure that no indigent [defendant] accused lacks full opportunity for his defense . . . . The right to legal and financial assistance at state expense is, however, not unlimited. Defendants seeking such assistance must satisfy the court as to their indigency . . . . This has largely been accomplished through [public defender services] . . . which has promulgated guidelines that are instructive as to the threshold indigency determination. . . .

"[General Statutes §] 51-297 (a) requires the public defender's office to investigate the financial status of

an individual requesting representation on the basis of indigency, whereby the individual must, under oath or affirmation, set forth his liabilities, assets, income and sources thereof. . . . [General Statutes §] 51-296 (a) requires that, [i]n any criminal action . . . the court before which the matter is pending shall, if it determines after investigation by the public defender or his office that a defendant is indigent as defined under this chapter, designate a public defender . . . to represent such indigent defendant . . . ." (Internal quotation marks omitted.)

Section 51-297 (f) provides in relevant part: "As used in this chapter, 'indigent defendant' means . . . a person who is formally charged with the commission of a crime punishable by imprisonment and who does not have the financial ability at the time of his request for representation to secure competent legal representation and to provide other necessary expenses of legal representation . . . ."

Here, there is evidence in the record to support the court's implicit finding that the defendant was not indigent and, thus, not entitled to the appointment of a public defender. The most probative evidence in the record that the defendant had the financial ability at the time of his request for a public defender to secure competent legal representation was that he, in fact, had obtained a private attorney who was ready, willing, and able to continue to represent him throughout the trial. On this fact alone, we conclude that the trial court's finding that the defendant was not indigent is not clearly erroneous, and, thus, this claim warrants no further discussion.[6]

[6] Because we conclude that the trial court's finding that the defendant had the requisite ability to obtain private counsel was not clearly erroneous on the basis of the fact he previously had done so, we need not reach the defendant's assertion that the public defender's office should not have considered the resources of the defendant's family in determining that he was ineligible for the services of a public defender.

Accordingly, we conclude that the court properly denied the defendant's application for the appointment of a public defender.[7]

II

The defendant next claims that the trial court violated his constitutional right to due process by failing to order, sua sponte, a judicial marshal to remove his shackles during the trial. The defendant states that this aspect of his claim does not implicate the court's denial of his motion for a mistrial.[8] Instead, he invites this

[7] Even if the defendant had established his indigency, the court would not have been obligated to replace Attorney Williams with a public defender. See *Sekou* v. *Warden*, 216 Conn. 678, 686, 583 A.2d 1277 (1990) (criminal defendant's right to counsel of choice does not grant defendant an unlimited opportunity to obtain alternative counsel on eve of trial). Under the circumstances of this case, the defendant's sixth amendment right to counsel could not have been violated when competent counsel, Attorney Williams, appeared with the defendant for trial and was fully prepared to represent the defendant through the conclusion of the trial. Furthermore, the defendant's application for a public defender was not filed in order to secure any particular attorney of the defendant's choosing but merely sought to get someone other than Attorney Williams. A defendant's dissatisfaction with counsel on the eve of trial or a disagreement over trial strategy does not entitle a defendant to the appointment of new counsel. *State* v. *Morico*, 14 Conn. App. 144–45, 539 A.2d 1033, cert. denied, 208 Conn. 812, 546 A.2d 281 (1988). Whether to allow a defendant to replace counsel in such circumstances is left to the sound discretion of the trial court. Id.

[8] The defendant notes in his appellate brief, however, that if we were to disagree with his due process claim, then "[we] would reach the issue of whether a mistrial should have been granted once the shackles became obvious." This sentence is the only mention within the defendant's main brief of this claim regarding the propriety of the court's denial of his motion for a mistrial. He makes no mention of it in his reply brief. Moreover, this claim is not accompanied by any supporting arguments or citations to relevant authority. Therefore, this claim is inadequately briefed by the defendant, and we decline to review it. See *In re Elijah C.*, 326 Conn. 480, 495, 165 A.3d 1149 (2017) ("Ordinarily, [c]laims are inadequately briefed when they are merely mentioned and not briefed beyond a bare assertion. . . . Claims are also inadequately briefed when they . . . consist of conclusory assertions . . . with no mention of relevant authority and minimal or no citations from the record . . . ." [Internal quotation marks omitted.]); see also *Connecticut Light & Power Co.* v. *Dept. of Public Utility Control*, 266 Conn. 108, 120, 830 A.2d 1121 (2003) (appellate courts "are not required

court to focus on whether the trial court violated his right to due process by failing to order, sua sponte, that his shackles be removed. Although this claim is not preserved because it was not raised to the trial court, we nevertheless review it 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).[9] We conclude that the trial court, under the circumstances of this case, did not violate the defendant's due process rights by failing to order, sua sponte, that his shackles be removed. Therefore, the defendant's claim fails under the third prong of *Golding*, which requires that he demonstrate that "the alleged constitutional violation . . . exists and . . . deprived the defendant of a fair trial . . . ."[10] Id., 240.

to review issues that have been improperly presented . . . through an inadequate brief" [internal quotation marks omitted]).

[9] The defendant argues that his due process claim is preserved by his motion for a mistrial, or alternatively, that it is reviewable pursuant to *State* v. *Golding*, supra, 213 Conn. 233. We disagree that his due process claim as framed on appeal was preserved by his motion for a mistrial because he never claimed in his motion that the court had an obligation to order, sua sponte, that his shackles be removed. Nevertheless, because his claim is arguably of constitutional magnitude, we review it pursuant to *Golding*. 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. The appellate tribunal is free . . . to respond to the defendant's [*Golding*] claim by focusing on whichever condition is most relevant in the particular circumstances." (Emphasis in original; footnote omitted.) Id., 239–40.

[10] Because we review the defendant's claim under *Golding* we need not undergo plain error analysis. See *State* v. *Abraham*, 64 Conn. App. 384, 408, 780 A.2d 223 ("[b]ecause this claim is unpreserved, our review is limited to either plain error review; see Practice Book § 60-5; or review pursuant to the *Golding* doctrine"), cert. denied, 258 Conn. 917, 782 A.2d 1246 (2001). We also decline the defendant's invitation to exercise our supervisory authority over the administration of justice.

The following additional facts are relevant to this claim. On Monday, February 29, 2016, after several days of trial, the state asked the court to raise the defendant's bond because he had failed to appear for trial on the previous Friday. After argument, the court raised the defendant's bond to require that he post an additional $50,000 in cash. The defendant was unable to post the increased bond, and he, therefore, was taken into custody by the judicial marshals. The court took a recess, during which the marshals shackled the defendant.

The record is unclear whether the court knew, at the time that it returned from the recess, that the defendant was wearing leg shackles. Nevertheless, after the recess, the defendant did not request that the court order that his shackles be removed. The defendant did object, however, to going forward with the trial because he was not feeling well. The court proceeded with the trial but granted the defendant permission to remain seated in order to accommodate any illness.

The trial resumed, and the defendant was seated in a manner in which his leg shackles were not visible to the jury.[11] At some point, however, the defendant requested permission to approach a witness. After being granted permission, the defendant stood up and started to approach the witness, at which time, the jury briefly could see that the defendant was wearing shackles on his ankles. At the request of the prosecutor, the jury immediately was excused. Once the jury was excused, the prosecutor requested that the defendant's shackles be removed. At this time, the court ordered the judicial marshals to remove the defendant's shackles. The defendant immediately moved for a mistrial. In opposition to the motion, the prosecutor argued that the defendant knew that the shackles would be visible to the

[11] Although the court did not make any specific factual finding regarding the visibility of the defendant's shackles while he remained seated, the defendant states in his brief that the shackles became visible only when he stood up and began to approach the witness.

jury when he stood up and that he could have brought the issue to the court's attention.

The court denied the defendant's motion for a mistrial. In denying the motion, the court stated that the defendant failed to request that the court order that his shackles be removed. The court also stated that it would give a limiting instruction regarding the shackles to the jury upon the defendant's request. The defendant then requested a limiting instruction regarding the shackles, which the court granted. After the jury returned, it was instructed not to consider the shackles in its deliberations.[12] The following day, the defendant renewed his motion for a mistrial. The prosecutor argued that a mistrial was not warranted because the jury's exposure to the shackles was brief and the court's response to the situation was immediate. Further, the prosecutor stated that the limiting instruction was an appropriate remedy. The court, again, denied the defendant's motion.

We begin with a discussion of the law applicable to the defendant's claim. "Central to the right to a fair trial, guaranteed by the Sixth and Fourteenth Amendments, is the principle that one accused of a crime is entitled to have his guilt or innocence determined solely on the basis of the evidence introduced at trial, and not on grounds of official suspicion, indictment, continued custody, or other circumstances not adduced as proof at trial. . . . This does not mean, however, that every practice tending to single out the accused from everyone else in the courtroom must be struck down."

[12] The court stated: "Ladies and gentlemen, I'm just going to give you a brief instruction. You may have noticed that the defendant did have on shackles as he walked out to show a document, to have a document marked for identification, and let me just indicate to you that I am instructing you that you're not to speculate as to any reasons for that and it's nothing that should factor into your deliberations and nothing that should be considered by you in any way."

(Citation omitted; internal quotation marks omitted.) *Holbrook* v. *Flynn*, 475 U.S. 560, 567, 106 S. Ct. 1340, 89 L. Ed. 2d 525 (1986).

"As a general proposition, a criminal defendant has the right to appear in court free from physical restraints. . . . Grounded in the common law, this right evolved in order to preserve the presumption favoring a criminal defendant's innocence, while eliminating any detrimental effects to the defendant that could result if he were physically restrained in the courtroom. . . . The right to a fair trial is a fundamental liberty secured by the Fourteenth Amendment. . . . The presumption of innocence, although not articulated in the Constitution, is a basic component of a fair trial under our system of criminal justice. . . . In order to implement that presumption, courts must be alert to factors that may undermine the fairness of the factfinding process. In the administration of criminal justice, courts must carefully guard against dilution of the principle that guilt is to be established by probative evidence and beyond a reasonable doubt. . . . Put another way, for the presumption to be effective, courts must guard against practices which unnecessarily mark the defendant as a dangerous character or suggest that his guilt is a foregone conclusion." (Citations omitted; internal quotation marks omitted.) *State* v. *Woolcock*, 201 Conn. 605, 612–13, 518 A.2d 1377 (1986).

"In order for a criminal defendant to enjoy the maximum benefit of the presumption of innocence, our courts should make every reasonable effort to present the defendant before the jury in a manner that does not suggest, expressly or impliedly, that he or she is a dangerous character whose guilt is a foregone conclusion. . . . The negative connotations of restraints, nevertheless, are without significance unless the fact of the restraints comes to the attention of the jury." (Internal

quotation marks omitted.) *State* v. *Brawley*, 321 Conn. 583, 588, 137 A.3d 757 (2016).

In *Deck* v. *Missouri*, 544 U.S. 622, 626, 125 S. Ct. 2007, 161 L. Ed. 2d 953 (2005), the United States Supreme Court stated that "[t]he law has long forbidden routine use of *visible* shackles during the guilt phase [of a criminal trial] . . . ." (Emphasis added.) The court further noted that "[c]ourts and commentators share close to a consensus that, during the guilt phase of a trial, a criminal defendant has a right to remain free of physical restraints *that are visible to the jury*; that the right has a constitutional dimension; but that the right may be overcome in a particular instance by essential state interests such as physical security, escape prevention, or courtroom decorum." (Emphasis added.) Id., 628. Furthermore, the court held that "the Fifth and Fourteenth Amendments prohibit the use of physical restraints *visible to the jury* absent a trial court determination, in the exercise of its discretion, that they are justified by a state interest specific to a particular trial." (Emphasis added.) Id., 629.

Turning to the defendant's claim, he argues that, because the court knew that he was taken into custody on the morning of February 29, 2016, it should have determined whether he was shackled in the courtroom and then ordered that the shackles be removed before the jury entered. The defendant's claim that he had a constitutional right obligating the trial court to inquire, sua sponte, whether he was shackled is misplaced in light of well established law.[13] Whether the defendant was or was not shackled, however, is not the critical question. Instead the critical question for purposes of the defendant's constitutional claim is whether the

[13] Although it may have been a "best practice" for the court to have inquired, sua sponte, whether the defendant in fact was shackled after he failed to post the increased bond, the defendant has not persuaded us that it was constitutionally *required* to make such an inquiry.

defendant was unnecessarily compelled to stand trial before a jury while *visibly* shackled.

This case is analogous to *Estelle* v. *Williams*, 425 U.S. 501, 502, 96 S. Ct. 1691, 48 L. Ed. 2d 126 (1976), in which the respondent claimed that his right to due process was violated because he was tried before a jury while wearing prison attire. Prison attire implicates the same due process concerns as shackles, as they both may have an erosive effect on the defendant's presumption of innocence. See *State* v. *Rose*, 305 Conn. 594, 622, 46 A.3d 139 (2012) (*Zarella, J.*, dissenting) ("A juror might associate prison attire with an increased likelihood that the defendant had committed the crime. In that sense, the harm is similar to that caused by requiring a defendant to remain visibly shackled . . . .").

In *Estelle*, the record was "clear that no objection was made to the trial judge concerning the jail attire either before or . . . during the trial." *Estelle* v. *Williams*, supra, 425 U.S. 509–10. The court noted that the respondent had raised this issue with the jail attendant prior to trial, but not to the trial judge. Id., 510. The court held that "although the State cannot, consistently with the Fourteenth Amendment, *compel* an accused to stand trial before a jury while dressed in identifiable prison clothes, the failure to make an objection to the court as to being tried in such clothes, for whatever reason, is sufficient to negate the presence of compulsion necessary to establish a constitutional violation." (Emphasis added.) Id., 512–13. Further, the court in *Estelle* held that the trial court was not obligated to inquire of the respondent or his counsel regarding whether he was deliberately choosing to be tried while wearing prison attire. Id., 512. Therefore, the court found no constitutional violation and reversed the judgment that had set aside the respondent's conviction. Id. The court in *Estelle* noted that "the courts have refused to embrace a mechanical rule vitiating any

conviction, regardless of the circumstances, where the accused appeared before the jury in prison garb. Instead, they have recognized that the particular evil proscribed is compelling a defendant, against his will, to be tried in jail attire." Id., 507.

In the present case, the defendant never requested that the court order the judicial marshals to remove his shackles. Therefore, as in *Estelle*, the defendant's constitutional right to due process was not violated because the defendant's failure to make an objection to the court was sufficient to negate the compulsion necessary to establish a constitutional violation. The present case is readily distinguishable from those relied on by the defendant in which the respective courts affirmatively ordered, or refused to remove after objection, restraints or prison attire.[14]

The defendant definitively knew that he was shackled, yet, he did not request that the court order that the judicial marshals remove his shackles. The defendant argues that he asked the judicial marshals to remove his shackles. That request, however, was inadequate to alert the court that he wished to have his shackles removed.[15] Once the trial resumed after the defendant

[14] See *State* v. *Brawley*, supra, 321 Conn. 583 (trial court ordered that defendant be shackled during trial); *State* v. *Rose*, supra, 305 Conn. 599 (trial court compelled defendant to stand trial in identifiable prison clothing and shackles); *State* v. *Shashaty*, 251 Conn. 768, 799, 742 A.2d 786 (trial court ordered that defendant remain in shackles during jury selection and trial), cert. denied, 529 U.S. 1094, 120 S. Ct. 1734, 146 L. Ed 2d 653 (1999); *State* v. *White*, 229 Conn. 125, 144–46, 640 A.2d 572 (1994) (trial court ordered that defendant be shackled during trial, "acquiescing" to sheriff's recommendation without analysis or justification); *State* v. *Williams*, 195 Conn. 1, 9–10, 485 A.2d 570 (1985) (trial court ruled that defendant remain in leg restraints during course of jury selection).

[15] The defendant argues that the trial court's inaction constituted "tacit acceptance" of the judicial marshal's actions and is the equivalent of an affirmative shackling order. See *State* v. *White*, 229 Conn. 125, 144–46, 640 A.2d 572 (1994). In *White*, our Supreme Court held that the trial court improperly had "acquiesced" in the judicial marshal's recommendation to shackle the defendants. Id., 146. In *White*, however, the defendants specifically requested that the court order their shackles removed, and the court

was taken into custody, he was seated in a manner in which his shackles were concealed. At this point, the defendant had the opportunity to request the court to order that his shackles be removed but failed to do so.

The defendant also had the option to remain seated and request that a marshal bring the court, or any witnesses, his documents. The defendant had, in fact, utilized the judicial marshals to hand documents to the court earlier that day. Instead, the defendant asked permission to approach the witness, voluntarily exposing his shackles to the jury. When the defendant approached the witness, he obviously was aware that he was shackled and that the jury would be able to observe the shackles.[16]

Additionally, the defendant has not provided any case law that stands for the proposition that a defendant's right to due process is violated if the jury is briefly exposed to facts that would lead it to believe that the defendant is in custody. In the present case, when the defendant revealed to the jury that he was shackled, the prosecutor immediately requested that the jury be excused. Once the jury was excused, the court ordered the judicial marshals to remove the defendant's shackles. Therefore, the shackles were visible to the jury for only a brief period of time. Upon the jury's return to

denied their request. Id., 144. Further, the defendants renewed their objection to the court on several occasions and filed affidavits before and after the trial regarding their complaints. Id., 145–46. Therefore, *White* wholly is distinguishable from the present case. Additionally, in *Estelle* v. *Williams*, supra, 425 U.S. 510, the respondent made a request regarding his prison attire to a jail attendant, which was not sufficient to notify the court of his request.

[16] When the defendant was canvassed by the court regarding his decision to represent himself, he stated that he understood the dangers and disadvantages of self-representation. One such risk was his lack of understanding as to how to raise properly the question of whether the shackles should be removed so that they would not be visible to the jury when he approached a witness.

the courtroom, the court gave a curative instruction regarding the shackles, the adequacy of which the defendant has not challenged.

Our conclusion that the jury's brief exposure to the defendant in shackles did not violate his constitutional rights is supported by authority from other jurisdictions. For example, in *Ghent* v. *Woodford*, 279 F.3d 1121, 1132 (9th Cir. 2002), a defendant claimed that his constitutional right to due process was violated because he was physically restrained by the state in the presence of the jury. Specifically, jurors saw the defendant in the hallway at the entrance to the courtroom in handcuffs and other restraints. Id., 1133. The reviewing court stated that "[t]he jury's 'brief or inadvertent glimpse' of a shackled defendant is not inherently or presumptively prejudicial, nor has [the defendant] made a sufficient showing of actual prejudice." Id.

Additionally, in *United States* v. *Jones*, 468 F.3d 704, 706 (10th Cir. 2006), a defendant claimed that his right to due process was violated because a juror briefly saw him in leg shackles during the afternoon break on the second day of trial. The court held that there was no due process violation and stated that, "[i]n itself, a juror's brief view of a defendant in shackles does not qualify as a due process violation worthy of a new trial." Id., 709.

We agree with the courts in *Ghent* and *Jones*, that a jury's brief or inadvertent glimpse of a shackled defendant is not inherently or presumptively unconstitutional. Unlike cases in which the defendant was ordered to remain shackled throughout the entirety of the trial, here, the exposure lasted for only a brief period of time. We are not convinced that the brief exposure to the jury of the defendant with shackles on his ankles, paired with a curative instruction, denied the defendant of a fair trial.

Finally, we are not persuaded by the defendant's reliance on Practice Book § 42-46,[17] which provides that reasonable efforts shall be employed to conceal such restraints from the view of the jurors. See footnote 17 of this opinion. The rules of practice, however, are not a source of constitutional rights, for which the failure to follow establishes a constitutional violation. See General Statutes § 51-14 (a) (noting that rules of practice and procedure "shall not abridge, enlarge or modify any substantive right").

In conclusion, we are not persuaded that the defendant had a constitutional right obligating the court to order, sua sponte, that his shackles be removed. Furthermore, we are not convinced that the defendant was compelled to stand trial before a jury while visibly shackled. Accordingly, the defendant has not demonstrated that a constitutional violation exists and that he was deprived of a fair trial.

The judgment in AC 40796 is affirmed; the appeal in AC 39379 is dismissed.

In this opinion the other judges concurred.

[17] Practice Book § 42-46 provides the court with a statutory framework when making a determination to employ reasonable means of restraint on a defendant. Practice Book § 42-46 provides: "(a) Reasonable means of restraint may be employed if the judicial authority finds such restraint reasonably necessary to maintain order. If restraints appear potentially necessary and the circumstances permit, the judicial authority may conduct an evidentiary hearing outside the presence of the jury before ordering such restraints. The judicial authority may rely on information other than that formally admitted into evidence. Such information shall be placed on the record outside the presence of the jury and the defendant given the opportunity to respond to it.

"(b) In ordering the use of restraints or denying a request to remove them, the judicial authority shall detail its reasons on the record outside the presence of the jury. The nature and duration of the restraints employed shall be those reasonable necessary under the circumstances. All reasonable efforts shall be employed to conceal such restraints from the view of the jurors. Upon request, the judicial authority shall instruct the jurors that restraint is not to be considered in assessing the evidence or in the determination of the case."

SUPREME COURT

STATE OF CONNECTICUT

PSC-18-0503

STATE OF CONNECTICUT

v.

MARCUS H.

CORRECTED ORDER ON PETITION FOR CERTIFICATION TO APPEAL

The defendant petition for certification to appeal from the Appellate Court, 190 Conn. App. 332 (AC 39379/AC 40796), is denied.

Lisa J. Steele, assigned counsel, in support of the petition.
Jennifer F. Miller, assistant state's attorney, in opposition.

Decided June 26, 2019

By the Court,

/s/
Carl D. Cicchetti
Assistant Clerk - Appellate

Notice Sent: June 26, 2019
Petition Filed: June 10, 2019
Clerk, Superior Court, K10KCR140325996S
Hon. Barbara Bailey Jongbloed
Clerk, Appellate Court
Reporter of Judicial Decisions
Staff Attorneys' Office
Counsel of Record

APPENDIX B

CR14-[redacted]; A.C. 40796	: SUPERIOR COURT
STATE OF CONNECTICUT	: J.D. OF NEW LONDON
VS.	: AT NEW LONDON
MARCUS T. H[redacted]	: February 9, 2018

DEFENDANT'S CORRECTED MOTION FOR ARTICULATION

The defendant-appellant, Marcus H[redacted] (hereinafter sometimes referred to as H[redacted]), pursuant to Practice Book § 66-5, requests the trial court (Jongbloed, J.) articulate its reasons for concluding that the defendant did not have a right to assigned counsel on Feburary 18, 2016, and denying the defendant's appeal of the Public Defender's decision that, although he was eligible for its services, it did not seek appointment in this case on Feburary 19, 2016.

H[redacted] is incarcerated as a result of the charges in this case.

I. BRIEF HISTORY OF THE CASE

Following a car accident early on the morning of May 25, 2014, H[redacted] was arrested and ultimately charged with Assault in the second degree with a motor vehicle, in violation of General Statutes §53a-60d; two counts of Risk of Injury to a minor, in violation of General Statutes §53a-21(a)(1); two counts of Reckless Endangerment in the third degree, in violation of General Statutes § 53a-63; Reckless driving, in violation of General Statutes § 14-222; Operating a Vehicle under the influence of intoxicating liquor, in violation of General Statutes § 14-227a(a)(1); Operating a Vehicle with an elevated blood-alcohol content, in violation of General Statutes § 14-237a(a)(2); Interfering with an officer, in violation of General Statutes § 53a-167a; and Failure to stop, in violation of General Statutes § 14-223(b). (Informations)

Jury selection began on February 18, 2016. (Jongbloed, J.) The State began to present its evidence on February 23, 2016. The jury found H[redacted] guilty of all ten counts. (T. 3/3/16 at 16-23) H[redacted] then pled guilty to being a subsequent offender. (T. 3/3/16 at 24-28)

At sentencing the trial court vacated H[redacted]'s conviction for Operating a Vehicle with an elevated blood-alcohol content, in violation of General Statutes § 14-237a(a)(2), and sentenced him for Operating a Vehicle under the influence of intoxicating liquor, in violation of General Statutes § 14-227a(a)(1). (T. 4/26/16 at 15-16, 66) H[redacted] was sentenced to a total effective sentence of twenty-three years, suspended after fourteen-and-a-half years, with five years conditional probation and a $1,000 fine. (T. 6/28/16 at 66-67)

This appeal followed.

II. SPECIFIC FACTS RELIED UPON

H[redacted] was initially represented by Jack O'Donnell. Attorney O'Donnell withdrew from the case on January 14, 2015. (T. 1/14/14) John Williams (Williams) filed his appearance on February 17, 2015. (Appearance) On February 18, 2016, at the start of jury selection, Williams told the trial court that H[redacted] wanted to hire new private counsel because of a dispute the day before. (T. 2/18/16e at 1-2, 5, 9-10) Williams agreed that he and H[redacted] had disagreed, but did not believe there was a breakdown in the attorney/client relationship. (T. 2/18/16e at 6-7, 10-11)

H[redacted] said:

> None of this is to waste any time. My life is on hold as this case goes on anyways. I just got out of jail maybe three months ago.[1] I'm not doing anything. I'm unemployed. I hardly see my children. It's not like I'm going out having fun each and every day. This stalls my life, and I just want my proper opportunity to be heard, and if I don't – if the person that is my voice is not even on the same

---

1 On May 19, 2015, H[redacted] had been found in violation of probation and sentenced to six months to serve. (T. 5/19/15) He was released on or about October 24, 2015.

> accord with me, it just makes it impossible for my side to be heard. That's the only thing that I want to be known. I'm not asking for a year. I'm just asking for just a short period of time.

(T. 2/18/16e at 4) Williams noted that H[redacted] had paid less than half of the fee agreed upon in the retainer agreement and had not made payments for "many, many months."[2] (T. 2/18/16e at 10) Harvin did not want to represent himself. (T. 2/18/16e at 8, 12-13)

The trial court denied H[redacted]'s request to continue the case until he could hire new counsel. (T. 2/18/16e at 8-9, 13-14, 16) H[redacted] then asked whether, if he waived counsel, the jury selection would continue. (T. 2/18/16e at 16) If it was a choice between proceeding pro se or remaining represented by Williams, H[redacted] opted to proceed pro se. (T. 2/18/16e at 16-24)

When canvassing H[redacted] under Practice Book § 44-3, the Court said that

> And with regard to appointed counsel, certainly, if you couldn't afford an attorney, you would have a right to an attorney appointed to represent you. However, in this case, you've retained Attorney Williams. You understand that, correct?

(T. 2/18/16e at 24) After canvassing H[redacted], the trial court agreed to let him proceed pro se, with Williams as standby counsel. (T. 2/18/16e at 24-26, 29-30) Voir dire began. (T. 2/18/16v)

The next day, Sean Kelly, Supervisor for the Public Defender's Office for G.A. 10, appeared. (T. 2/19/16e at 1) He said that although H[redacted] had applied for the public defender's representation, his office was not seeking appointment. (T. 2/19/16e at 1-10)

Kelly said that the H[redacted]'s financial affidavit indicated that he was eligible for the public defender's services. (T. 2/19/16e at 9-10) However, Kelly also said that the public defender would also consider H[redacted]'s mother's income (because he was living with her), H[redacted]'s ability to post bond, and his ability to have hired private counsel. (T. 2/19/16e at 2-3, 9-10)

---

2 Attorneys are "officers of the court, and when they address the judge solemnly upon a matter before the court, their declarations are virtually made under oath". *State v. Michael J.*, 274 Conn. 321, 335, 875 A.2d 510 (2005).

H[redacted] responded that when he posted bond he was employed and was in a very different financial situation. (T. 2/19/16e at 3-4). He had given Kelly a copy of his fee agreement with O'Donnell, who he still owed $4,390, having only paid O'Donnell $610. ((T. 2/19/16e at 3) H[redacted] did not pay Williams, his mother had given Williams a sum of money. (T. 2/19/16e at 3-4) Williams was still owed a substantial sum. (T. 2/19/16e at 4; see T. 2/18/16e at 10) H[redacted] had spoken to a third attorney prior to February 18th, but his family had been unable to pay for the third attorney's services. (T. 2/18/16e at 3)

At that point, H[redacted] had posted bond of $25,000 on June 10, 2014 and another bond of $50,000 on June 24, 2014. The total listed premiums on the bond was $5,500, but H[redacted] owed the bondsmen money for both bonds. (T. 2/19/16e at 9-10).

H[redacted] asked the court to appoint the Public Defender's office because he was financially eligible for their services, and did not want to represent himself. (T. 2/19/16e at 4-6, 8)

The trial court said "under all the circumstances, [the Public Defender's Office is] not seeking to be appointed. I am not going to appoint the Public Defender's Office to represent you. We'll continue your appearance pro se with standby counsel, by Attorney Williams." (T. 2/19/16e at 10) Voir dire continued. (T. 2/19/16v)

H[redacted] remained pro-se through trial, with the aid of Wiliams as unpaid standby counsel.

On February 29, 2016, the trial court accepted H[redacted]'s fee waiver regarding subpoenas. (T. 2/29/16 at 12, 78-81; See Motion for Rectification filed contemporaneously) H[redacted]'s fee waiver for appeal was also granted. The undersigned represents him as assigned counsel.

As part of a waiver of counsel under Practice Book § 44-3, the trial court is expected to consider the defendant's right to assigned counsel. H[redacted] asks this Court to articulate its finding about whether he had a right to assigned counsel on February 18th, and what findings it made that he had knowingly waived that right.

If the public defender concludes that a defendant does not qualify for its services, a defendant can appeal that decision to the trial court under General Statutes § 51-297 (g) and Practice Book § 37-6. See *Newland v. Commissioner*, 322 Conn. 664 (2016) (McDonald, J. dissenting). H[redacted] asks this Court to articulate its findings on February 19th that, although H[redacted] was unemployed and owed substantial sums to both Attorney O'Donnell and Attorney Williams, as well as to his bondsmen, he did not qualify for the public defender's services.

III. LEGAL GROUNDS RELIED UPON

Defendant relies upon Practice Book § 66-5, 61-10 (appellant's obligation to provide adequate record for review).

THE DEFENDANT
MARCUS H[redacted]

__/s/_____
Lisa J. Steele, Esq.
Special Public Defender
Steele & Associates
P.O. Box 547
Shrewsbury, MA 01545
(508) 925-5170
Juris No. 940910

CERTIFICATION:

I hereby certify that a copy of the foregoing was mailed on February 9, 2018, to Susan Marks, Esq., Office of the Chief State's Attorney, 300 Corporate Place, Rocky Hill, CT 06067; and the defendant-appellant Marcus H[redacted], No. 403853, MacDougall Correctional Inst., 1153 East Street South, Suffield, CT 06078.

.

__/s/_____
Lisa J. Steele, Esq.

DOCKET NO. K10K-CR1[redacted] K10K-MV14[redacted] (A.C. 40796)	: SUPERIOR COURT :
STATE OF CONNECTICUT	: JUDICIAL DISTRICT OF NEW LONDON
V.	:
MARCUS H[redacted]	: April 12, 2018

RULING ON CORRECTED MOTION FOR ARTICULATION

The defendant, Marcus H[redacted], filed a Corrected Motion for Articulation with the Appellate Court on February 9, 2018 seeking articulation of the ruling of this court in concluding that the defendant did not have a right to assigned counsel. The Appellate Court referred the motion to this court pursuant to P.B. § 66-5. The state's response was filed on February 15, 2018 and forwarded to this court. The court heard argument on the motion on March 6, 2018 at which time the court also heard and granted a motion for rectification of the record.

In the Corrected Motion for Articulation, the defendant seeks (1) an articulation of the court's finding about whether he had a right to assigned counsel on February 18, 2016 and what findings it made that he had knowingly waived that right, and (2) an articulation of the court's findings on February 19, 2016, that the defendant did not qualify for the public defender's services. After careful review of the defendant's claims, the court grants the motion to the extent that the court provides the following articulation.

The charges in this case stemmed from events during the early morning hours of May 25, 2014 when the defendant drove his vehicle at high rates of speed, engaging police in pursuit while under the influence of alcohol and with his two young daughters in the car. He ultimately

crashed the vehicle which landed upside down partially submerged in a swimming pool, and severely injured his daughters.[1] The defendant's blood alcohol content was determined to be .293 and his urine tested positive for marijuana. At the time of the offenses, the defendant was in possession of marijuana and was also on probation for operating a motor vehicle under the influence of alcohol.

Following a lengthy pre-trial period during which time the defendant hired two different private attorneys and consulted with a third, the matter was ultimately set down for jury selection on February 18, 2016. Evidence in the case was scheduled to begin February 23, 2016. This was the second time a jury was selected in the case. The first jury had been selected on October 14 and 15, 2015. Approximately three weeks later, on November 6, 2015, with the evidence in the case scheduled to begin on November 9, 2015, defense counsel, Attorney John Williams ("Williams") requested a competency evaluation on the ground that counsel had serious concerns about the defendant's ability to assist in his own defense. Over the state's objection that this constituted a delay tactic, the court granted the request for a competency evaluation and

---

[1]The evidence established that the defendant, who had been drinking alcohol at the Mohegan Sun Casino, fell asleep while operating his vehicle after midnight on May 25, 2014 with his daughters in the backseat. Following attempted intervention first by a concerned citizen and later by a Ledyard police officer, the defendant sped away. The officer followed, but suspended his pursuit when the defendant reached dangerously high speeds. Very shortly thereafter, the officer responded to an accident on Route 12 in Ledyard coming upon a horrific scene in which the defendant's vehicle had crashed into a telephone pole, splitting it in half, and then into a DOT switch box. The car had become airborne and traveled over an embankment, hitting the roof of a nearby home and landing upside down, partially submerged in the homeowner's swimming pool. The first responders, with the assistance of the homeowners, were able to save the defendant and his two daughters, but the arm of the defendant's two-year-old daughter was almost completely severed and the other daughter, then four, was also treated for trauma and an ankle injury. Medical providers, through numerous surgeries, were able to reattach the arm, but despite their best efforts, most of the use of the injured arm was lost.

the jury which had been previously selected was discharged. Subsequently, the defendant was found competent on December 8, 2015 and the matter set down for jury selection on February 18, 2016.

On the morning of jury selection, the defendant requested a continuance in order to hire a new attorney claiming that there was a breakdown in the attorney-client relationship and that he and Attorney Williams had a disagreement and were not "on the same accord." Tr. 2/18/16 p. 6. After hearing from Attorney Williams, who indicated that there had been a disagreement but that he did not believe there was a breakdown in the attorney-client relationship, and in view of the age and lengthy procedural history of the case, the court denied the request for a continuance. When the court indicated that the matter would be proceeding with Attorney Williams who was ready, willing and able to proceed as counsel, the defendant then sought to represent himself. The court canvassed the defendant on his right to counsel and specifically on his right to appointed counsel, but noted that the defendant had retained a private attorney. Thus the defendant was "clearly advised of his right to the assistance of counsel, including the right to the assignment of counsel, when so entitled ...." P.B. Sec. 44-3. Following the canvass, the defendant was permitted to represent himself with Attorney Williams as stand-by counsel. The matter then proceeded to jury selection.[2]

The next day, February 19, 2016, Attorney Sean Kelly, from the Office of the Public Defender appeared in court to report that the defendant had come to his office the previous afternoon, that he had met with him then and again in the morning of February 19, at which time

[2]The court notes that the defendant made reference to his continuing efforts to retain new counsel. See Tr. 2/18/16 at 8, 12.

the defendant applied for their services. Attorney Kelly set forth at length the reasons he was not seeking to be appointed, which included the fact that he had not been provided with the "full view" of the defendant's financial picture because the defendant lived with his mother and he would be required to consider household income in making an eligibility determination. He also explained that the defendant had posted significant bonds and had entered into arrangements to hire two private attorneys to represent him. The defendant contested Attorney Kelly's representations, claiming that he had posted the bonds over 18 months earlier and that his financial status had changed. He stated that he owed both Attorney Jack O'Donnell (his first attorney) and Attorney Williams "a substantial amount of money" and stated the amounts owed. Attorney Kelly then further explained his rationale indicating that he could not consider the financial affidavit "inside a vacuum," that he did not have all the financial information, that the defendant had a record of income in the past, posted bonds and retained the services of two private attorneys. He stated that "given the global circumstances and everything that comes into this case, no, we're not seeking appointment, given those circumstances." Tr., p. 9-10 (2/19/16). The court then stated "All right, so under all the circumstances, they're not seeking to be appointed. I am not going to appoint the Public Defender's Office to represent you." *Id.* p. 10. Jury selection then continued with the defendant representing himself with the able assistance of Attorney Williams as stand-by counsel. As the transcript reflects, the defendant utilized the services of Attorney Williams throughout the jury selection. Tr., p. 8 (2/19/16).

As set forth above, on February 18, 2016, pursuant to P.B. Sec. 44-3, the court canvassed the defendant and permitted him to represent himself with the assistance of stand-by counsel. The record clearly reflects the canvass as well as the conclusions reached by the court in finding

that the defendant knowingly, intelligently and voluntarily waived his right to counsel and permitted him to represent himself with the assistance of stand-by counsel. Tr., pp. 17-26, 29. (2/18/16).

On February 19, 2016, the court considered Attorney Kelly's carefully explained reasons why he was not seeking to be appointed, which included the lack of a complete financial picture and the global circumstances of the case. As Attorney Kelly explained in detail, since the defendant was living at home, he would need to receive information concerning household income which had not been provided such that Attorney Kelly did not have the "full view" of the defendant's financial picture. Attorney Kelly explained that he could not consider the financial affidavit "inside a vacuum" and that he was required to consider all of the circumstances presented. The defendant challenged the determination of the public defender and stated that his financial picture had changed in the time period following his posting of bonds and retaining two attorneys. Although he did not specifically seek to appeal the public defender's decision in accordance with C.G.S Sec. 51-297(g), he did ask the court to consider appointing the public defender and claimed that he was financially eligible. He provided the amounts he owed to the two attorneys he had previously retained, and stated that he owed money on the bonds which had been posted, but did not present the public defender or the court with any additional financial documents regarding household or any other financial information. Although the evidence was not scheduled to begin until February 23, 2016, at no time after the morning of February 19 did the defendant request the court to revisit whether he qualified based upon additional information regarding his changed financial picture. The defendant was fully informed that the public defender's position was that they had been provided inadequate information concerning

household income and that the global picture did not support appointment. While the defendant stated he could provide additional information, in fact he did not do so and did not request additional time in which to obtain it. *State v. Fleming*, 116 Conn. App. 469, 483 (2009)(where defendant did not complete the application adequately, trial court entitled to accept the report of the public defender). In *Fleming*, the defendant did not challenge the public defender's determination as to indigency or notify the trial court that he disagreed with the public defender's determination. Here, although the defendant did express his disagreement with the determination of the public defender, he did not bring additional material information to the attention of the public defender or the court. He provided the amounts owed to his attorneys, but those amounts, and the fact that money was owed to a bail bondsman, did not change the analysis under all the facts, including that the defendant had appeared the day before represented by his second privately retained attorney ready to proceed to trial. Even considering the additional information, the totality of the circumstances fully supported the determination of the public defender. Thus, for the reasons stated herein and as stated on the record on February 19, 2016, the application for appointment of counsel was denied.

It is So Ordered, this 12th day of April, 2018.

Jongbloed, J.

K10K-CR14-[redacted]

K10K-MV14-[redacted]

State of Connecticut

v.

Marcus H[redacted]

Superior Court

G.A. 10

Held at New London

June 28, 2016

Present: The Honorable Barbara B. Jongbloed

Judgment

Upon the complaint of the Assistant State's Attorney of said Superior Court, Geographical Area 10, charging the above defendant with the crimes of Assault in the Second degree with a Motor Vehicle in violation of C.G.S. 53a-60d; a second count of Assault in the Second degree with a Motor Vehicle in violation of C.G.S 53a-60d; Operating a Motor Vehicle while under the Influence of alcohol or drugs in violation of C.G.S. 14-227a; Risk of Injury to a Minor in violation of C.G.S. 53-21(a); and a second count of Risk of Injury to a Minor in violation of C.G.S. 53-21(a).

The accused appeared on June 24, 2014 and a pro forma plea of Not Guilty, jury election was entered all counts of the information.

Thence to February 17, 2016 when the Assistant State's Attorney filed a substitute information charging the defendant with Assault in the Second Degree with a Motor Vehicle in violation of C.G.S. 53a-60d of the C.G.S; Risk of Injury to a Child in violation of C.G.S.53-21(a)(1); a second count of Risk of Injury to a Child in violation of C.G.S. 53-21(a)(1); Reckless Endangerment in the First Degree in violation of C.G.S 53a-63; a second count of Reckless Endangerment in the First Degree in violation of C.G.S. 53a-63; Reckless Driving in violation of C.G.S. 14-222; Operating a Motor Vehicle under the Influence of Intoxicating Liquor in violation of C.G.S. 14-227a(a)(1); Operating a Motor Vehicle with an Elevated Blood Alcohol Content in violation of C.G.S. 14-227a(a)(2) ; Interfering with an Officer in violation of C.G.S. 53a-167a; and Increasing Speed in Attempt to Escape or Elude Officer in violation of C.G.S. 14-223(b).

Thence to February 22, 2016 for a hearing on the defendant's Motion to Suppress; said motion was then denied on February 23, 2016 when defendant's trial began. On February 24, 2016 defendant's Motion in Limine was denied and trial commenced.

Thence to March 1, 2016 when the defendant made an oral motion to the court for a mistrial; said motion was denied. Trial continues to March 2, 2016 when defendant makes a second oral motion for acquittal; said motion is denied; jury deliberations began.

Thence to March 3, 2016 when the jury returned verdicts of Guilty to all counts of the information as charged: Guilty to the charge of Assault in the Second Degree with a Motor Vehicle in violation of C.G.S. 53a-60d; Guilty to the charge of Risk of Injury to a Child in violation of C.G.S. 53-21(a)(1);

Guilty to the second count of Risk of Injury to a Child in violation of C.G.S. 53-21(a)(1); Guilty to Reckless Endangerment in the First Degree in violation of C.G.S 53a-63; Guilty to a second count of Reckless Endangerment in the First Degree in violation of C.G.S. 53a-63; Guilty to the charge of Reckless Driving in violation of C.G.S 14-222; Guilty to the charge of Operating a Motor Vehicle under the Influence of Intoxicating Liquor in violation of C.G.S. 14-227a(a)(1); Guilty to the charge of Operating a Motor Vehicle with an Elevated Blood Alcohol Content in violation of C.G.S. 14-227a(a)(2); Guilty to the charge of Interfering with an Officer in violation of C.G.S. 53a-167a; and Guilty to the charge of Increasing Speed in an Attempt to Escape or Elude an Officer in violation of C.G.S. 14-223(b). The verdict was accepted. On same date of March 3, 2016 the defendant plead Guilty to Second Part of the Information charging him with being a second offender to the charge of Operating Under the Influence in violation of C.G.S. 14-227a(2nd). A Presentence Investigation Report was ordered and sentencing was continued for April 26, 2016.

Thence to April 26, 2016 when the defendant was sentenced as follows:

Count One: Assault in the Second Degree with a Motor Vehicle in violation of C.G.S 53a-60d sentenced to 5 years execution suspended after 3 years to serve followed by 5 years of probation;

Count Two: Risk of Injury to a Child in violation of C.G.S. 53-21(a)(1) sentenced to 8 years execution suspended after 5 years to serve consecutive to Count One followed by 5 years of probation;

Count Three: Risk of Injury to a Child in violation of C.G.S. 53-21(a)(1) sentenced to 8 years execution suspended after 5 years to serve consecutive to Counts One and Two followed by 5 years of probation;

Count Four: Reckless Endangerment in the First Degree in violation of C.G.S. 53a-63 sentenced to 1 year to serve to run concurrently to all other counts;

Count Five: Reckless Endangerment in the First Degree in violation of C.G.S. 53a-63 sentenced to 1 year to serve to run concurrently to all other counts;

Count Six: Reckless Driving in violation of C.G.S. 14-222 sentenced to 30 days to serve to run concurrently to all other counts:

Count Seven: Operating under the Influence in violation of C.G.S. 14-227a(a)(1) as a second offender to 2 years execution suspended after 18 months to serve of which 120 days are mandatory to serve, a $1,000.00 fine imposed and remitted; sentence to run consecutively to all other counts followed by 5 years of probation;

Count Eight: Interfering with an Officer in violation of C.G.S. 53a-167a sentenced to 1 year to serve to run concurrently to all other counts:

Count Nine: Increasing Speed in an attempt to Escape or Elude an Officer sentenced to 5 years to serve to run currently to all other counts

For a total effective sentence of Twenty-three years execution suspended after Fourteen years and Six months to serve of which One hundred and twenty days are mandatory to serve followed by Five years of probation.

In addition to the standard conditions of probation the following special conditions were imposed: 100 hours of community service; do not operate a motor vehicle without a valid license; use of an ignition interlock device for two years after license restoration; participate in a victim impact panel; drug and alcohol counseling and treatment as deemed necessary by the Office of Adult Probation; pay restitution for out of pocket expenses as deemed necessary by the Office of Adult Probation; mental health evaluation and treatment as deemed necessary by the Office of Adult Probation; child/family evaluation and treatment as deemed necessary by the Office of Adult Probation; abide by conditions of the Standing Criminal Protective Orders.

A stay of imposition of the sentence was granted at the defendant's request to June 28, 2016.

Thence to June 28, 2016 when the stay was lifted.

Date of Conviction: March 3, 2016

Date of Imposition of Sentence: June 28, 2016

Attest:

Linda Worobey – Deputy Chief Clerk

APPELLATE COURT

OF THE

STATE OF CONNECTICUT

A.C. [redacted]

STATE OF CONNECTICUT

v. REDACTED

MARCUS T. H[redacted]

BRIEF OF THE DEFENDANT-APPELLANT
WITH ATTACHED APPENDIX

LISA J. STEELE
ASSIGNED COUNSEL
JURIS NUMBER 410940
STEELE & ASSOCIATES
P.O. BOX 547
SHREWSBURY, MA 01545
TEL: (508) 925-5170
FAX: (508) 925-5170
steelelaw@earthlink.net

COUNSEL OF RECORD
AND
ARGUING ATTORNEY

APPENDIX E

TABLE OF CONTENTS

STATEMENT OF ISSUES

I. WHETHER THE TRIAL COURT VIOLATED H[redacted]'S FEDERAL AND STATE CONSTITUTIONAL RIGHT TO COUNSEL.

(Pages 4 - 25)

II. WHETHER THE TRIAL COURT VIOLATED H[redacted]'S FEDERAL AND STATUE DUE PROCESS RIGHTS WHEN IT DID NOT REMOVE HIS LEG SHACKLES, AND DID NOT GIVE ANY REASON FOR HIS BEING RESTRAINED, PRIOR TO THE JURY SEEING THEM AT TRIAL.

(Pages 25 -35)

TABLE OF AUTHORITIES

Cases

Statutes

Other Materials

NATURE OF THE PROCEEDINGS

Following a car accident early on the morning of May 25, 2014, Marcus H[redacted] (H[redacted]) was arrested and ultimately charged with Assault in the second degree with a motor vehicle, in violation of General Statutes § 53a-60d; two counts of Risk of Injury to a minor, in violation of General Statutes § 53a-21(a)(1); two counts of Reckless Endangerment in the third degree, in violation of General Statutes § 53a-63; Reckless Driving, in violation of General Statutes § 14-222; Operating a Vehicle under the influence of intoxicating liquor, in violation of General Statutes § 14-227a(a)(1); Operating a Vehicle with an elevated blood-alcohol content, in violation of General Statutes § 14-237a(a)(2); Interfering with an officer, in violation of General Statutes § 53a-167a; and Failure to Stop, in violation of General Statutes § 14-223(b).[1] (Informations)

As explained in further detail below, when H[redacted] sought to replace the attorney his family had retained, and his request for a continuance was denied, the defendant asked to waive counsel and represent himself with the aid of stand-by counsel. (T. 2/18/16e; see Ruling on Corrected Motion for Articulation) Jury selection began that day. (Jongbloed, J.)

That afternoon, H[redacted] sought the Public Defender's services. At a hearing the next morning, the Public Defender said that although H[redacted] was eligible for its services, its office did not seek appointment. The trial court declined to appoint counsel. (T. 2/19/16e) Voir dire continued.

The State began to present its evidence on February 23, 2016. As explained in further detail below, on the morning of the fourth day of evidence, H[redacted] was seen by the jury

---

[1]H[redacted] also had pending charges in New Britain, which were transferred to New London and resolved after this case. See *State v. Harvin*, CR13-0271029-T.

wearing shackles. The judge ordered the shackles removed, denied his motions for mistrial, and instead gave the jury a curative instruction. (T. 2/29/16 at 27; T. 3/1/16 at 16-17, 80-84)

H[redacted]'s motions for judgment of acquittal were denied. (T. 2/29/16 at 114-118; 3/2/16 at 24-26) The jury found him guilty of all ten counts. (T. 3/3/16 at 16-23) H[redacted] then pled guilty to being a subsequent offender. (T. 3/3/16 at 24-28) At sentencing, the trial court vacated H[redacted]'s conviction for Operating a Vehicle with an elevated blood-alcohol content, in violation of General Statutes § 14-237a(a)(2), and sentenced him for Operating a Vehicle under the influence of intoxicating liquor, in violation of General Statutes § 14-227a(a)(1). (T. 4/26/16 at 15-16, 66)

H[redacted] was sentenced to a total effective sentence of twenty-three years, suspended after fourteen-and-a-half years, with five years conditional probation and a $1,000 fine. (T. 6/28/16 at 66-67) Execution of the sentence was stayed for sixty days to allow him to complete a program at his then-current facility. (T. 4/26/16 at 70-73; T. 6/28/16)

On March 3, 2018, the trial court granted H[redacted]'s motion for rectification regarding a fee waiver form and applications for subpoenas. (Order) On April 12, the trial court ruled on H[redacted]'s corrected motion for articulation. (Ruling)

STATEMENT OF FACTS

There is no dispute that H[redacted]'s car was in a serious accident on the night of May 25, 2014, nor that H[redacted] and his two daughters[2] were in the car. (See T. 4/26/16 at 45-53; 3/2/16 at 45)

A bystander came upon a dark-colored Acura stopped at a light between 12:30 and 1

[2]Under General Statutes § 54-86e, H[redacted]'s daughters are identified by relative age.

a.m. (T. 2/23/16 at 70, 73) She approached the stopped car and found the driver asleep or unconscious in the driver's seat, and two children in car seats in the rear. (T. 2/23/16 at 73) She opened the door; the driver responded to her and drove away. (T. 2/23/16 at 74-75). She called 911. (T. 2/23/16 at 75)

Officers Pudvah and Gagnon received a report about a black Acura being driven by a black male, with two females in the back, at about 12:45 a.m. (T. 2/24/16 at 18, 69) Pudvah found H[redacted]'s blue Acura parked in a gas station parking lot. (T. 2/24/16 at 21-23, 69-70) At trial, Pudvah recalled that when he spoke to H[redacted], he smelled alcohol; believed that H[redacted]'s speech was slurred and slow; and saw that H[redacted]'s eyes were bloodshot and glassy. (T. 2/24/16 at 24-25, 46, see *id.* at 79-80, 101, 112, 122, 146-47, 159; 2/25/16 at 81; 2/29/16 at 19) When Pudvah returned to his cruiser, he heard H[redacted]'s car start and begin to drive away. (T. 2/24/16 at 26-27) Pudvah began to pursue, but broke off pursuit because he was concerned about H[redacted]'s daughters' safety and followed at a distance. (T. 2/24/16 at 28-31, 51-53, 70-71) Pudvah did not see the accident, but came upon it shortly after it occurred. (T. 2/24/16 at 31-33, 71-72, 95)

H[redacted]'s car was badly damaged and ended up in a backyard swimming pool at about 1 a.m.. (T. 2/23/16 at 78-82; 2/24/16 at 31-33, 72-75, 95-98; 2/25/16 at 110-126) Pudvah and Gagnon went into the pool and broke a window to remove H[redacted]'s daughters. (T. 2/23/16 at 86-87; 2/24/16 at 37-44) H[redacted]'s younger daughter's arm was badly injured. (T. 2/24/16 at 40-42, 54-60, 76-78, 98, 110, 128, 132-33; 2/25/16 at 23-48; 2/29/16 at 16-17) H[redacted]'s older daughter was also injured. (T. 2/24/16 at 60, 78-79, 98-100, 110, 132, 136; 2/25/16 at 12-14; 2/29/16 at 19)

H[redacted] was removed from the driver's seat and taken to a hospital. (T. 2/23/16 at 88-89,

78-82, 111-12, 144-46, 156; 2/25/16 at 100; 2/29/16 at 19-21) Police found a small bag of marijuana in H[redacted]'s pocket. (T. 2/24/16 at 44-45, 112) H[redacted]'s blood was tested; he was found to have a BAC of 0.293. (T. 2/29/16 at 110)

ARGUMENT

The defendant had private counsel, who he had lost confidence in and argued with over an outstanding legal fee. H[redacted] wanted to be represented by counsel, but the trial court would not grant him a continuance to find new counsel. The defendant has a right to choice of counsel; he wanted to chose the Public Defender over representing himself. The trial court denied him the ability to apply to the Public Defender and make that choice before allowing him to proceed pro se. This violated the defendant's federal and state constitutional rights to counsel.

Although the defendant was unemployed and eligible for the public defender's services, the Public Defender declined to seek representation because the defendant once had the resources to hire private counsel and to pay for bond, and because his family had contributed to his bonds and private attorney's fee. The trial court denied H[redacted] a public defender. He forced to represent himself pro se, with the aid of his former attorney, as unpaid standby counsel. This violated the defendant's federal and state constitutional rights to counsel.

Subsequent to finding the defendant ineligible for the Public Defender, the trial court accepted an Affidavit of Indigence for purposes of waiving the fee for subpoenas. He was later found eligible for assigned counsel on appeal, and the fees were waived for the appeal. There is no indication that any additional document was sought or provided to support the subsequent findings of H[redacted]'s indigence.

Article first, § 8, of the Connecticut constitution provides in relevant part: "In all criminal

prosecutions, the accused shall have a right to be heard by himself and by counsel." At the time of the 1818 Constitution's enactment, "the advice and services of counsel were regarded as crucial to a criminal defendant at that time, especially given the inability of a defendant to testify in Connecticut [at that time]." *State v. Davis*, 199 Conn. 88, 99-100 (1986). Earlier, Chief Justice Zephaniah Swift wrote that the fundamental law in Connecticut has been that a person charged with a crime was "entitled to every possible privilege in making his defense, and manifesting his innocence, by the instrumentality of counsel...." 2 Swift, A SYSTEM OF THE LAWS OF THE STATE OF CONNECTICUT 399 (1796). Subsequently, Connecticut was "the first state to adopt the public defender system". *State v. Hudson*, 154 Conn. 631, 635 (1967). It had given defendants the right to counsel long before the *Gideon* decision in 1962. See *Spring v. Constantino*, 168 Conn. 563, 566-67 n.2 (1975). In *Gideon*, the United States Supreme Court found that indigent defendants are entitled to appointed counsel under the Sixth Amendment to the United States Constitution. In light of Connecticut's history of protecting the right to counsel, the trial court's abused its discretion in denying the defendant a public defender, resulting in him trying this case as a reluctant pro-se.

The trial court's denial of a public defender stands in stark contrast to Connecticut's history of providing a defendant with "every possible privilege" in defending himself and manifesting his innocence. As set forth below, this was structural error – "the right to counsel is so basic that its violation mandates reversal even if no particular prejudice is shown and even if there is overwhelming evidence of guilt." *Ebron v. Commissioner*, 307 Conn. 342, 351 (2012).

During trial, the pro se defendant's bond was raised, and he was taken into custody when he could not pay it. The marshals returned him to the courtroom wearing leg shackles,

which became obvious when he approached a prosecution witness with an exhibit. The trial court twice denied his motions for mistrial, and instead gave a curative instruction. This violated longstanding federal and state protections against the jury seeing a defendant in shackles. H[redacted]'s convictions should be reversed and the case remanded for new trial.

I. H[redacted] WAS DEPRIVED OF HIS FEDERAL AND STATE RIGHT TO COUNSEL.

The defendant wanted an attorney to represent him. He was denied a continuance to replace the private attorney his family hired. He would have chosen the Public Defender before proceeding pro se, but the trial court, when canvassing him on his decision to waive counsel, presumed that he was not entitled to appointed counsel.

That afternoon, H[redacted] applied for a public defender. He, himself, was indigent and eligible for a public defender. Nevertheless, the Public Defender declined to represent him because he had once been employed and been able to hire private counsel, and had been able to post bond, and because his family had provided some funds for his second private attorney. H[redacted] objected, but the trial court declined to appoint the Public Defender.

The trial court abused its discretion and violated H[redacted]'s federal and state constitutional rights to counsel. His conviction should be reversed and the case remanded for new trial.

A. Facts and Standard of Review.

H[redacted] was initially represented by Jack O'Donnell. Attorney O'Donnell withdrew from the case on January 14, 2015. (T. 1/14/14) H[redacted] owed O'Donnell a substantial sum. (T. 2/19/16e at 3)

John Williams (Williams) filed his appearance on February 17, 2015. (Appearance) On February 18, 2016, at the start of jury selection, Williams told the trial court that H[redacted] wanted to hire new counsel because of a dispute the day before. (T. 2/18/16e at 1-2, 5, 9-10) Williams

agreed that he and H[redacted] had disagreed, but did not believe there was a breakdown in the attorney/client relationship. (T. 2/18/16e at 6-7, 10-11)

In response to the prosecution's claim that he was just trying to delay trial, H[redacted] said:

> None of this is to waste any time. My life is on hold as this case goes on anyways. I just got out of jail maybe three months ago. I'm not doing anything. I'm unemployed. I hardly see my children. It's not like I'm going out having fun each and every day. This stalls my life, and I just want my proper opportunity to be heard, and if I don't – if the person that is my voice is not even on the same accord with me, it just makes it impossible for my side to be heard. That's the only thing that I want to be known. I'm not asking for a year. I'm just asking for just a short period of time.

(T. 2/18/16e at 4) Williams said that H[redacted] had paid less than half of the fee agreed upon in the retainer agreement and had not made payments for "many, many months." (T. 2/18/16e at 10) H[redacted] did not want to represent himself. (T. 2/18/16e at 8, 12-13) He wanted an attorney he could trust and believe in; and had concerns that Williams would not handle the case to his fullest ability because of the outstanding fee. (T. 2/18/16e at 12)

The trial court denied H[redacted]'s request to continue the case until he could hire new counsel. (T. 2/18/16e at 8-9, 13-14, 16) If it was a choice between proceeding pro se or remaining represented by Williams, H[redacted] asked to proceed pro se. (T. 2/18/16e at 16-24) The trial court began to canvas H[redacted] under Practice Book § 44-3. When it reached the portion of the canvas about waiving the right to appointed counsel, the trial court said that

> And with regard to appointed counsel, certainly, if you couldn't afford an attorney, you would have a right to an attorney appointed to represent you. However, in this case, you've retained Attorney Williams. You understand that, correct?

(T. 2/18/16e at 24; see Ruling on Corrected Motion for Articulation at 3-4) H[redacted] never waived his right to appointed counsel.

After completing the § 44-3 canvas, the trial court agreed to let him proceed pro se, with

Williams as unpaid standby counsel. (T. 2/18/16e at 24-26, 29-30; See Ruling on Corrected Motion for Articulation) Voir dire began. (T. 2/18/16v)

H[redacted] tried to contact the Public Defender during a recess, but was unable to even obtain an application.[3] (T. 2/18/16v at 137) He was able to meet with the Public Defender late that afternoon and again the following morning. (T. 2/19/16e at 1)

The next day, Sean Kelly (Kelly), Supervisor for the Public Defender's Office for G.A. 10, appeared. (T. 2/19/16e at 1; Ruling on Corrected Motion for Articulation at 3-4) Although H[redacted] had applied for a public defender, his office was not seeking appointment. (T. 2/19/16e at 1-10)

H[redacted]'s financial affidavit indicated that he was eligible for the Public Defender's services. (T. 2/19/16e at 9-10) However, Kelly said that the Public Defender would also consider H[redacted]'s mother's income (because he was living with her), H[redacted]'s ability to post bond, and his ability to have hired private counsel in the past. (T. 2/19/16e at 2-3, 9-10)

H[redacted] responded that when he posted bond[4] he was employed and was in a very different financial situation. (T. 2/19/16e at 3-4; see T. 2/18/16e at 18) He had given Kelly a copy of his fee agreement with O'Donnell, who he had paid $610, and still owed $4,390. (T. 2/19/16e at 3) H[redacted] did not pay Williams, his mother had given Williams a sum of money. (T. 2/19/16e at 3-4) Williams was owed a substantial sum. (T. 2/19/16e at 4; 2/18/16e at 8, 12-13) H[redacted] had spoken to a third attorney prior to February 18th, but his family had been unable

---

[3](The trial court suggested that as the case was a Part B (G.A. 10) case being tried in the Part A Judicial District building, that the defendant would need to talk to the Part B Public Defender. (T. 2/18/16v at 137-38)

[4]On or about June 24, 2014, H[redacted] had posted bond of $75,000 (surety). (see T. 6/24/14 at 8) H[redacted] said he also owed balances on the bonds. (T. 2/19/16e at 9-10)

to pay for the third attorney's services. (T. 2/18/16e at 3)

Under General Statutes § 51-297, the Public Defender determines whether a defendant is eligible for its service. If the defendant is found ineligible, then he can appeal the Public Defender's decision to the trial court under General Statutes § 51-297(g)[5] and Practice Book § 37-6. H[redacted] asked that the trial court "would consider the appointment from the Public Defender's Office, because I am, indeed, financially eligible for the services." (T. 2/19/16e at 4, see 4-6, 8) He did not specifically mention General Statutes § 51-297(g) and Practice Book § 37-6. (Ruling on Corrected Motion for Articulation at 5) The trial court said "under all the circumstances, [the Public Defender's Office is] not seeking to be appointed. I am not going

---

[5]**Sec. 51-297. Determination of indigency; definition, investigation, reimbursement for services, appeal. Penalty for false statement.**

(a) A public defender, assistant public defender or deputy assistant public defender shall make such investigation of the financial status of each person he has been appointed to represent or who has requested representation based on indigency, as he deems necessary. He shall cause the person to complete a written statement under oath or affirmation setting forth his liabilities and assets, income and sources thereof, and such other information which the commission shall designate and require on forms furnished for such purpose.

* * * *

(f) As used in this chapter, "indigent defendant" means (1) a person who is formally charged with the commission of a crime punishable by imprisonment and who does not have the financial ability at the time of his request for representation to secure competent legal representation and to provide other necessary expenses of legal representation; (2) a child who has a right to counsel under the provisions of subsection (a) of section 46b-135 and who does not have the financial ability at the time of his request for representation to secure competent legal representation and to provide other necessary expenses of legal representation; or (3) any person who has a right to counsel under section 46b-136 and who does not have the financial ability at the time of his request for representation to secure competent legal representation and to provide other necessary expenses of legal representation.

(g) If the Chief Public Defender or anyone serving under the Chief Public Defender determines that an individual is not eligible to receive the services of a public defender under this chapter, the individual may appeal the decision to the court before which the individual's case is pending.

to appoint the Public Defender's Office to represent you. We'll continue your appearance pro se with standby counsel, by Attorney Williams." (T. 2/19/16e at 10)

The trial court felt that H[redacted] did not clearly ask it to reconsider his qualifications based on the additional information he had provided on the 19th. (Ruling on Corrected Motion for Articulation at 5-6) It faulted H[redacted] for not either providing additional information to the public defender, or asking for additional time to do so.[6] (Ruling on Corrected Motion for Articulation at 6) It also concluded that even considering the information he provided on the 19th, "the totality of the circumstances fully supported the determination of the public defender." (Ruling on Corrected Motion for Articulation at 6)

Voir dire continued. (T. 2/19/16v)

During trial, the trial court accepted H[redacted]'s fee waiver regarding subpoenas. (T. 2/29/16 at 12, 78-81; See Rectification dated 3/8/16) H[redacted]'s fee waiver for appeal was also granted. (See T. 9/6/16 at 2)

The trial court abused its discretion under General Statutes § 51-297(g) and Practice Book § 37-6 by not appointing a public defender when the defendant challenged the Public Defender's decision not to seek an appointment. In doing so, the trial court violated H[redacted]'s fundamental federal and state constitutional rights to counsel.

---

[6]The State had argued on numerous occasions that it felt H[redacted] was intentionally trying to delay his trial. Presumably, it would have vigorously objected to any delay in the voir dire to allow H[redacted] or his family to provide additional documentation to the Public Defender. The Public Defender was present during H[redacted]'s explanation of his finances and did not indicate any willingness to reconsider its decision if provided with more information.

It was reasonable for H[redacted], a pro se litigant, to conclude that he had done everything he could to apply to the Public Defender, to appeal the Public Defender's denial to the trial court, and that he had been rejected by both the Public Defender and the trial court.

The trial court's assessment of a defendant's offer of proof about whether he was indigent and was, therefore, eligible for state funded expert assistance, is a factual determination "subject to a clearly erroneous standard of review." *State v. Martinez*, 295 Conn. 758 (2010). See also *Newland v. Commissioner*, 322 Conn. 664 (2016); *Newland v. Warden*, 2017 WL 3671358 (Sup. Ct. 2017).

To the extent that H[redacted] did not raise a constitutional challenge to the denial of counsel at trial, appellant raises it under the familiar four prongs of *State v. Golding*, 213 Conn. 233, 239-40 (1989) as modified by *In re Yasiel R*, 317 Conn. 773 (2015). A defendant's right to choice of counsel and an indigent defendant's right to counsel are both fundamentally guaranteed by the federal and state constitution. See *State v. Cushard*, 328 Conn. 558, 566-67 (2018). The record regarding H[redacted]'s desire for counsel and his subsequent plea that the trial court appoint the Public Defender despite it declining to represent him are adequate for review. The nature of the deprivation will be set forth herein. An erroneous deprivation of counsel is structural error; to the extent the Court may disagree, H[redacted] was harmed by representing himself pro-se in this case.

In the alternative, H[redacted] asks this Court to use its supervisory powers to require trial courts to treat a pro-se defendant's objection to the Public Defender's decision not to seek appointment as an appeal under statute, and to assign counsel when the defendant is eligible, even if relatives who have no legal obligation to support him might have resources to pay for counsel.

In the alternative, pursuant to Practice Book § 60-5, this Court "may in the interests of justice notice plain error not brought to the attention of the trial court." In order for this Court to address a claim of plain error, it "first must determine if the error is indeed 'plain' in the

sense that it is patent or readily discernable on the face of a factually adequate record, and also obvious in the sense of not debatable." *State v. Myers*, 290 Conn. 278, 287 (2009). The second prong of the plain error doctrine is that the defendant must "demonstrate[] that the failure to grant relief will result in manifest injustice." *Id.* at 288. Here, it should have been patent or readily discernable that H[redacted] was unemployed, in debt to his private attorney and to the bondsmen, and his family was unwilling or unable to further pay for private counsel. The defendant's potential eligibility for a public defender was obvious. Forcing a defendant who is potentially eligible for a public defender to represent himself is a manifest injustice.

"It is well settled that [a]ppellate courts possess an inherent supervisory authority over the administration of justice." (Internal quotation marks omitted.) *State v. Elson*, 311 Conn. 726, 764 (2014). H[redacted] recognizes that the exercise of the Court's supervisory powers is "an extraordinary remedy to be invoked only when circumstances are such that the issue at hand, while not rising to the level of a constitutional violation, is nonetheless of [the] utmost seriousness, not only for the integrity of a particular trial but also for the perceived fairness of the judicial system as a whole." *State v. Carron*, 313 Conn. 823, 851 (2014); *Elson* at 765.

A defendant who desires counsel, and manifestly is having trouble paying for private counsel, should not be left to represent himself without either clearly affirmatively waiving his right to assigned counsel, or after determination by the Public Defender that he is not eligible, and review of that determination by the trial court.

B. The Trial Court Abused Its Discretion in Not Delaying the Start of Voir Dire to Allow Harvin to Apply to the Public Defender and Resolve His Eligibility.

The trial court's denial of a short continuance to allow H[redacted] to resolve whether he was entitled to assigned counsel violated H[redacted]'s federal constitutional rights under the Sixth

Amendment[7], and Article first, § 8[8] of the Connecticut Constitution.

> The Sixth Amendment
>
> > guarantees a defendant the right to be represented by an otherwise qualified attorney whom that defendant can afford to hire, or who is willing to represent the defendant even though he is without funds. To be sure, the right to counsel of choice is circumscribed in several important respects Significantly, a defendant may not insist on representation by an attorney he cannot afford or who for other reasons declines to represent the defendant. The right to counsel of choice does not extend to defendants who require counsel to be appointed for them.... * * * We have recognized a trial court's wide latitude in balancing the right to counsel of choice against the needs of fairness ... and against the demands of its calendar.

(internal citations and quotation marks omitted) *State v. Peeler*, 320 Conn. 567, 578-79 (2016).

Here, the defendant could no longer afford his private attorney and wanted to chose the public defender, who would not be constrained by H[redacted] or his family's limited resources. The trial court denied him the ability to make this choice by assuming that he would not qualify for the Public Defender without allowing the Public Defender to exercise its statutory responsibility to determine eligibility. Instead, when faced with a choice between a private attorney he had

---

[7]The sixth amendment to the United States Constitution provides in relevant part: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed . . . and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

[8]The constitution of Connecticut, article first, § 8, provides in relevant part: "In all criminal prosecutions, the accused shall have a right to be heard by himself and by counsel; to be informed of the nature and cause of the accusation; to be confronted by the witnesses against him . . . and in all prosecutions by indictment or information, to a speedy, public trial by an impartial jury. . . ."
Connecticut has had a long history of recognizing the significance of the right to counsel, even before that right attained federal constitutional importance. *State v. Stoddard*, 206 Conn. 157, 164 (1988).

lost confidence in, and proceeding pro se, H[redacted] chose to proceed pro se. The trial court abused its discretion by not staying the proceedings for a reasonable time to allow Harvin to apply to the Public Defender, and to allow it to make an eligibility determination.

"It is hardly necessary to say that, the right to counsel being conceded, a defendant should be afforded a fair opportunity to secure counsel of his own choice." *State v. Martinez*, 115 Conn. App. 426, 427, 437 (2009)[9]. When a defendant who has private counsel seeks to replace that attorney, and seeks a continuance to do so, trial courts are given significant discretion regarding continuances.

> Trial judges necessarily require a great deal of latitude in scheduling trials. Not the least of their problems is that of assembling the witnesses, lawyers, and jurors at the same place at the same time, and this burden counsels against continuances except for compelling reasons. Consequently, broad discretion must be granted trial courts on matters of continuances; only an unreasoning and arbitrary 'insistence upon expeditiousness in the face of a justifiable request for delay ' violates the right to the assistance of counsel.

Morris v. Slappy, 461 U.S. 1, 11-12 (1983). See *United States v. Gonzalez-Lopez*, 548 U.S. 140, 144 (2006) (not disturbing trial court's "wide latitude in balancing the right to counsel of choice against the needs of fairness, and against the demands of its calendar).

In *State v. Lopez*, 280 Conn. 779 (2007), this Court held that:

> It is well settled that the determination of whether to grant a request for a continuance is within the discretion of the trial court, and will not be disturbed on appeal absent an abuse of discretion. . . . A reviewing court is bound by the principle that every reasonable presumption in favor of the proper exercise of the trial court's discretion will be made. . . . Our role as an appellate court is not to substitute our judgment for that of a trial court that has chosen one of many reasonable alternatives. . . . Therefore, on appeal, we . . . must determine whether the trial court's decision denying the request for a continuance was

---

[9] Because the *Martinez* Court affirmed the trial court's decision, it declined to consider whether a defendant has to show prejudice in order to prevail on this claim. *Id.* at 437, n. 9.

arbitrary or unreasonable.

> We have identified several factors that a trial court may consider when exercising its discretion in granting or denying a motion for continuance. . . . These factors include the likely length of the delay . . . the impact of delay on the litigants, witnesses, opposing counsel and the court . . . the perceived legitimacy of the reasons proffered in support of the request . . . and the likelihood that the denial would substantially impair the defendant's ability to defend himself . . . ."

Id. at 786-87 (three month delay of sentencing requested so substituted counsel could review transcripts) citing *State v. Delgado*, 261 Conn. 708, 711, 714 (2002). The trial court should not have assumed that H[redacted] was not eligible for the Public Defender, when it rejected H[redacted]'s request for a continuance to hire a new private attorney. It should have asked H[redacted] if he wanted to apply to the Public Defender – which H[redacted] did. He went to the Public Defender's Office during a recess, and again after the end of voir dire.

Despite Williams' assurance that the defendant's outstanding bill would not consciously affect his representation (T. 2/18/16e at 6-7), H[redacted] was concerned that Williams' judgment might nonetheless be affected. (T. 2/18/16e at 12) It is not unreasonable for a defendant to be concerned about the subconscious effects of unpaid legal fees and seek appointment of the Public Defender, who does not have the same financial concerns.

The State argued that H[redacted] was trying to stall or delay his trial. (T. 2/18/16e at 3) H[redacted] responded that the dispute had arisen the prior day – this was H[redacted]'s first chance to ask the trial court for a short continuance. (T. 2/18/16e at 5) Here, as in *State v. Hamilton*, 228 Conn. 234, 238 (1994), the trial court did not make a finding that the defendant's effort to replace counsel was either frivolous or motivated by an intent to delay his trial.

Requests for a continuance to change counsel on the "eve of trial" have long been disfavored in Connecticut. See *State v. Drakeford*, 202 Conn. 75, 83-84 (1987) (defendant requested new assigned counsel during voir dire). Courts are "especially hesitant to find an

abuse of discretion when the court has denied a motion for continuance made on the day of trial". *State v. Martinez*, 115 Conn. App. 426, 433 (2009). This case is different because the defendant had asked about replacing private counsel with new counsel, but also sought the Public Defender's services – at that point, the Court did not have evidence about whether he was eligible for the public defender. It knew, or should have known, that he had become unemployed and was in debt to his attorney, which suggests that he might be indigent. The trial court could not decide whether to grant a continuance without knowing whether Harvin was eligible for the Public Defender and, if so, how long the Public Defender might need to be ready for trial.

In most of the cases where this issue has arisen, the defendant seeks to replace private counsel with another private attorney. See *State v. Hamilton*, 228 Conn. 234, 237-38 (1994) (no indication of ability to retain counsel, evidence scheduled to begin that day); *Sekou v. Warden*, 216 Conn. 678, 686-89 (1990) (client had not yet retained private counsel, but wished to do so); *State v. Beckenbach*, 198 Conn. 43, 47-50 (1985) (no specific or approximate date indicated when counsel of choice, who was busy on another trial, would be available); *State v. Martinez*, 115 Conn. App. 426, 433 (2009) (defendant represented by assigned counsel sought to retain named private counsel); *State v. Williams*, 102 Conn. App. 168, 926 A.2d 7 (2007) (expressed wish to retain private counsel, but had not done so). See *State v. Ross V.*, 110 Conn. 1 (2008) (change of appointed counsel requested mid-trial; defendant had contacted private counsel but counsel had not yet agreed to take case). In many of these cases, the defendant had aspirations of hiring a new private attorney, but had not yet made the financial arraignments to have a private attorney ready and willing to enter an appearance. Under such circumstances, the trial court might well be concerned about whether the

defendant could or would do so if given a continuance.

In some cases, the defendant seeks to replace assigned or a public defender counsel with another publically-provided attorney. See e.g. *State v. Drakeford*, 202 Conn. 75, 83-84 (1987) (defendant requested new assigned counsel during voir dire); *State v. Marrero-Alejandro*, 159 Conn. App. 376 (2015) (no abuse of discretion not to replace assigned counsel during jury selection); *State v. Jenkins*, 70 Conn. App. 515, 522 (2002) (multiple requests for new assigned counsel due to unspecific complaints); *State v. Marsala*, 59 Conn. App. 135, 144 (2000) (request for new assigned counsel on eve of trial due to tactical disagreements); *State v. Rosado*, 52 Conn. App. 408, 429 (1999) (request for new assigned counsel on eve of trial due to language/communications issue denied). In this instance, however, the defendant does not have a constitutional right to choose his publically-funded attorney.

When a defendant seeks to replace private counsel with a public defender because a financial problem has arisen on the eve of trial, this Court has not decided whether the trial court has discretion to deny the defendant a continuance to determine whether the defendant is eligible for the public defender. If the defendant wants to chose the Public Defender, then the trial court needs to know whether he is eligible – just as when a defendant seeks to replace private counsel with another private attorney, the trial court wants to know if the defendant has made arrangements with a named attorney who is ready and willing to enter his or her appearance.

Unless the defendant is clearly and unequivocally apprised of his right to apply for the Public Defender and waives that right, the trial court must continue the case long enough for the defendant to promptly apply to the Public Defender and for the Public Defender to reach an eligibility determination. If the defendant is eligible for the Public Defender, then the trial

court would be faced with the first-impression question of whether it can deny an indigent defendant his right to counsel and force him to proceed pro se.

Although H[redacted] did not expressly request a continuance to apply to the Public Defender, it should have been obvious to the trial court that H[redacted] did not want to waive his right to counsel (T. 2/18/16e at 8, 12,14), and was having trouble paying for private counsel either himself or with his family's support. H[redacted] was trying to exercise his right to choose counsel, and his choice was the Public Defender instead of Williams.

The trial court should have asked H[redacted] whether he wished to apply for the Public Defender before accepting his waiver of counsel, and not assumed that he was ineligible. T. 2/18/16e at 24; see Ruling on Corrected Motion for Articulation at 3-4)

The State may argue that the defendant did not ask for a continuance to apply to the Public Defender and spoke only about private counsel. The defendant was, in effect, pro se in this discussion with the trial court. He had two years of college, but had never been on trial before, and had never previously represented himself. (T. 2/18/16e at 18-19, 25) As he said, he saw himself in a situation "where it's pro se or staying with Attorney Williams", and chose to go pro se. Unlike the defendant in *State v. Flemming*, 116 Conn. App. 469, 476 (2009), he did not clearly and unequivocally state that he did not want to apply for a public defender. See also *State v. Henderson*, 307 Conn. 533, 542 n. 11 (2012) (defendant did not disagree with public defender's representation that he chose to be without counsel).

The trial court should have continued this case long enough to determine whether H[redacted] was eligible for a Public Defender. Instead, it denied H[redacted] the ability to exercise is right to choice of counsel.

C. H[redacted] did not Waive his Right to Counsel.

When canvassing H[redacted] under Practice Book § 44-3 on the first day of voir dire, the trial court said that:

> And with regard to appointed counsel, certainly, if you couldn't afford an attorney, you would have a right to an attorney appointed to represent you. However, in this case, you've retained Attorney Williams. You understand that, correct?

(T. 2/18/16e at 24; see Ruling on Corrected Motion for Articulation at 3-4) It did not ask H[redacted] whether he was waiving his right to appointed counsel – it implied that he was not eligible and his waiver would be a moot point.

A waiver of counsel is validly made when the record establishes that the defendant (1) is aware of the right to counsel, including appointed counsel if he is indigent, (2) possesses the intellectual capacity to appreciate the consequences of his decision to represent himself, (3) comprehends the nature of the proceedings, the charges against him, and the possible range of punishments, if convicted, and (4) aware of the detriments of declining the help of an attorney. *State v. Cushard*, 328 Conn. 558, 567-68 (2018) citing Practice Book § 44-3.

Here, H[redacted] was not made aware of his right to appointed counsel if he was indigent. Instead, the trial court presumed that H[redacted] was ineligible for the Public Defender, because he or his family had retained private counsel. Rather than ask H[redacted] whether wanted to assert his right to appointed counsel and, if so, have an eligibility determination made by the Public Defender, the Court presumed that he was ineligible. The trial court, in its Articulation, felt that this colloquy adequately advised H[redacted] of his right to assigned counsel. (Ruling on Corrected Motion for Articulation at 3) H[redacted] disagrees – the trial court stated that having retained private counsel, he did not have a right to appointed counsel. H[redacted] did not knowingly waive his right to counsel. He was told that he was not eligible for appointed counsel.

Here, the trial court's conclusion that H[redacted]'s waiver of his right to counsel was knowing and intelligent was an abuse of discretion and a violation of H[redacted]'s federal and state constitutional rights. See *State v. Collins*, 299 Conn. 567, 610 (2011); *State v. Flanagan*, 293 Conn. 406, 419-20 (2009).

If this Court concludes that H[redacted] was eligible for the Public Defender's Services, his conviction should be reversed and the case remanded for new trial.

D. The Trial Court Abused its Discretion and Violated H[redacted]'s Federal and State Rights to Counsel by Denying Him a Public Defender.

As set forth above, H[redacted] applied for the Public Defender on the evening of the first day of jury selection. The Public Defender agreed that he was eligible for its services, but declined to seek appointment because H[redacted] had posted bond while he still had a job, had retained private counsel (to whom he owed a substantial sum), and his parents had retained a second private attorney. The trial court, after hearing H[redacted]'s discussion of his finances, including that he was unemployed and owed money to both prior attorneys and the bondsmen, and being aware of H[redacted]'s family's inability to retain a third private attorney, concluded that he was not eligible for a public defender.

The trial court's conclusion that he was not eligible for the Public Defender was an abuse of discretion and violated H[redacted]'s constitutional rights to counsel. H[redacted]'s ability to post bond and to retain private counsel before he was found in violation of his probation and incarcerated for six months for violation of his probation (See T. 5/19/15) did not disqualify him from the Public Defender's services.

The Public Defender has the statutory duty to determine eligibility for its services. "Connecticut has been in the vanguard of the jurisdictions which have adopted measures to

assure to indigents in criminal cases the full protection of their legal rights regardless of their inability to pay for such protection." *Cooper v. Matzkin*, 160 Conn. 334, 339 (1970). "It is the duty of the State to provide adequate means to assure that no indigent criminal defendant lacks full opportunity for his defense." *Id.* at 340. General Statutes § 51-297(g) and Practice Book § 37-6 allow the defendant to appeal the Public Defender's eligibility decision to the trial court. To the extent that the trial court made an assessment of H[redacted]'s offer of proof about his finances to show that he was indigent and was, therefore, eligible for a public defender, that assessment is a factual determination "subject to a clearly erroneous standard of review." *State v. Martinez*, supra, 295 Conn. at 782.

This is not a case such as *State v. Martinez*, 295 Conn. 758, 783-84 (2010) where the defendant had not established his indigence. Neither the State nor the Public Defender disputed that H[redacted] was unemployed, living with his mother, and owed substantial sums to both of his prior attorneys and to the bondsmen. When he subsequently filed an affidavit of indigence for purposes of waiving the subpoena fee, it was accepted without any further proof of H[redacted]'s finances. When H[redacted] sought to appeal his conviction, appellate counsel was assigned and the fees waived. H[redacted] was eligible to have fees waived mid-trial, eligible for a public defender post-trial, and should have been found eligible for a public defender at the start of trial.

This Court has upheld the denial of a public defender when a defendant has been able to post a large bond of $200,000 or more. See *State v. Henderson*, 307 Conn. 533 (2012) (defendant posted $380,000 bond, did not clarify how bond had been posted at hearing); *State v. Gamer*, 152 Conn. App. 1 (2014) (defendant posted $200,000 surety bond and had "considerable amount" in business bank account); *State v. Flemming*, 116 Conn. App. 469

(2009) (public defender said defendant ineligible because he posted $200,000 bond, defendant did not contest that decision); see also *State v. Martinez*, 295 Conn. 758, 784 (2010) (defendant not entitled to state funded DNA expert when defendant, with family's aid, posted $50,000 bond, and was represented by private counsel); *State v. Guitard*, 61 Conn. App. 531, 539 (2001) (defendant not entitled to public defender when defendant appeared with counsel and admitted that he was not indigent). Here, H[redacted] posted a much smaller amount, had first done so when he was still employed, and was in arrears to the bondsmen. The trial court abused its discretion in concluding that he was not eligible for the Public Defender based on his prior ability to post bond.

The trial court and the Public Defender also relied upon H[redacted]'s family's ability to pay for counsel to find him ineligible for appointed counsel. H[redacted] is an adult. His family has no legal obligation to pay his legal bills. In considering an adult college student's eligibility for public defender services, an Ohio Court of Appeals held that the defendant's parents had no legal duty to support her and so "the question is not whether Appellant's parents have the ability to employ counsel, but rather, the question is whether Appellant has the ability." *State v. Kasler*, 2013-Ohio-3850, 995 N.E.2d 262 (Ohio App. 2013). See also *People v. Gustavson*, 131 Ill.App.2d 887, 269 N.E.2d 517 (1971) (reversible error for trial counsel to deny appointed counsel for adult defendants on premis that their parents might have had funds to hire counsel); *Schmidt v Uhlenhopp*, 258 Iowa 771, 140 N.W.2d 118 (1966) (parent's willingness to pay cash bond did not negate defendant's inability to retain private counsel); *McCraw v State*, 476 P.2d 370 (Okla Crim. App. 1970) (son's ability to post bond for defendant did not preclude finding that defendant lacked funds to retain counsel) . Here, not only was H[redacted]'s family not obligated to support him and to pay for counsel, but it was clear that even with their

aid, H[redacted] was in arrears with Williams, and could not come up with the money to retain a different private attorney.

An adult defendant's family resources should not preclude a defendant's eligibility for a public defender. H[redacted] asks this Court to preclude the Public Defender from declining to represent a defendant based on the resources of those he may reside with, or be related to, but who have no obligation to pay his legal fees.

Finally, the trial court accepted H[redacted]'s affidavit of indigence for purposes of waiving the fee for subpoenas a few days later, after his family had posted an increased bond. Subsequently, H[redacted] was found eligible for a public defender on appeal, and the appellate fees waived by the trial court. There is no indication that in either case H[redacted]'s own financial circumstances had changed or that his family's circumstances had changed. He was indigent on February 29th-March 2nd. He was indigent post-trial. And he should have been found indigent and assigned a public defender on February 19th.

The State may argue that this Court should not review the trial court's decision because H[redacted], pro se, did not expressly invoke General Statutes § 51-297(g) and Practice Book § 37-6. H[redacted] urges this Court to interpret Harvin's objection to the Public Defender's decision not to seek appointment and his explanation of his finances as an appeal under these provisions. (See T. 2/19/16e at 4, see 4-6, 8) A defendant in this situation is unlikely to be familiar with the specific statute. If the trial court understands that the defendant contests the Public Defender's decision and might, if given sufficient information, overturn that decision and appoint counsel, then the defendant has adequately invoked his right to appeal the Public Defender's decision. If the trial court has any doubts about the defendant's desire to appeal, it should affirmatively ask the defendant if he is appealing. To deny review because a pro se defendant does not

formally ask the trial court to exercise its discretion under § 51-297(g) stands in stark contrast to Connecticut's history of providing a defendant with "every possible privilege" in defending himself and manifesting his innocence.

In the alternative, H[redacted] contends that the Public Defender's and trial court's remarks could have been reasonably understood to mean that he had no further way to challenge the decision that he was not eligible for the public defender's services. See *Newland v. Warden*, 2017 WL 3671358 (Sup. Ct. 2017) Here, as in *Newland*, this was the defendant's first criminal trial. One cannot reasonably expect a pro se defendant with no criminal court experience, to understand the Public Defender and trial judge's statements, to mean anything except that the Public Defender's decision was conclusive – having once been able to pay for private counsel and for bond, himself and with the aid of his family, permanently disqualified H[redacted] from the Public Defender's appointment. H[redacted] would have had every reason to believe that an appeal under statute or practice book, if he were aware that such existed, would be futile.

Here, the trial court concluded its Articulation by stating that even considering the information that H[redacted] provided on the February 19th, "the totality of the circumstances fully supported the determination of the public defender." (Ruling on Corrected Motion for Articulation at 6) That determination was, in effect, a denial of H[redacted]'s appeal under § 51-297(g) and Practice Book § 37-6. It should be reviewed by this Court for a violation of H[redacted]'s constitutional rights to counsel, as well as for abuse of discretion and/or plain error.

H[redacted] was eligible for assigned counsel and was deprived of his federal and state rights. The erroneous deprivation of counsel for an entire trial is a structural error. *Satterwhite v. Texas*, 486 U.S. 249, 257 (1988); *Gideon v. Wainwright*, 372 U.S. 335, 344–45(1963). This is not a case like *State v. Cushman*, 328 Conn. 558, 569 (2018), where the defendant was

improperly canvassed on his right to counsel prior to trial, and when properly canvassed reasserted his desire to proceed pro se. Here H[redacted] consistently maintained his desire for counsel and was deprived of it during jury selection, trial, and sentencing by the trial court and the Public Defender.

His conviction should be reversed and the case remanded for new trial.

II. THE TRIAL COURT VIOLATED H[redacted]'S FEDERAL AND STATE CONSTITUTIONAL RIGHT TO DUE PROCESS BY NOT REMOVING HIS LEG SHACKLES BEFORE THE JURY SAW THEM.

On the morning of Monday, February 29th, H[redacted] began to cross-examine a prosecution witness and asked permission to approach the witness with an exhibit. At that moment, it became obvious to the jury that, for the first time in this case, he was wearing leg shackles.

The trial court has the obligation to control its courtroom and ensure that defendants do not appear before the jury in restraints absent compelling reasons stated on the record. See Practice Book § 42-46. No such reasons were given, or present in this case. Instead, the trial court effectively acquiesced in the marshals' decision to shackle H[redacted] – which the trial court is not permitted to do. *State v. White*, 229 Conn. 125, 146 (1994). Knowing that H[redacted] had been taken into custody that morning, the trial court abused its discretion and violated H[redacted]'s federal and state constitutional rights by not determining whether H[redacted] was shackled in the courtroom and in not removing the shackles before the jury entered. It's curative instruction, used to justify twice denying H[redacted]'s motions for mistrial, was insufficient to cure this fundamental mistake.

The State has the burden of showing, beyond a reasonable doubt, that the verdict was not affected by the shackles – it cannot do so.

A. Facts and Standard of Review.

On Friday, February 26th, H[redacted] did not appear in court, having fallen ill overnight and gone to the emergency room that morning. (T. 2/26/16 at 1-2) On Monday, February 29th, H[redacted] was still ill and was late in arriving in the courtroom.[10] (T. 2/29/16 at 2-5, 82-84, 122-34) The State, continuing its argument that H[redacted] was trying to delay the case, asked to have his bond raised to $50,000. (T. 2/29/16 at 3-9)

When asked to respond, H[redacted]'s standby attorney said:

> Well, I don't think it's really my place, Your Honor, since I'm only stand-by, but it would seem to me that it would be the better part of discretion for what just happened here to be repeated in his presence.

(T. 2/29/16 at 4) The trial court increased H[redacted]'s bond. (T. 2/29/16 at 5, 133) H[redacted] was taken into custody when he was unable to post the increased bond. (T. 2/29/16 at 9) Thereafter, H[redacted] said that he was still nauseous. (T. 2/29/16 at 10) The State suggested the trial court allow H[redacted] to asked questions while seated. (T. 2/29/16 at 10-11)

When H[redacted] began to cross-examine the State's first witness, he asked to approach the witness with an exhibit.[11] (T. 2/29/16 at 22) When he began to walk towards the witness, it became obvious that he was wearing leg shackles. (T. 2/29/16 at 22-23; 3/1/16 at 9)

The trial court excused the jury and ordered the shackles be removed. (T. 2/29/16 at 23, 25) H[redacted] twice moved for a mis-trial. (T. 2/29/16 at 23; see 3/1/16 at 3-17) H[redacted] said he had asked the marshals to ask the trial court whether the shackles could be removed, but

---

[10]On March 2nd, H[redacted] was late because his mother was diagnosed with the flu and could not bring him to court. (T. 3/2/16 at 2-3; CtEx. 5)

[11]The defendant's actions in walking while wearing shackles do not waive this claim. *State v. Shashaty*, 251 Conn. 768, 786 (1999) (defendant did not induce trial court to order him to wear shackles, his decision to ask jurors in voir dire if shackles would prejudice them cannot serve to waive his claim that the shackling order violated his constitutional rights).

nobody asked the trial court to do so. (T. 2/29/16 at 24-25; 3/1/16 at 7, 9) The trial court denied his motions for mistrial and gave the jury a limiting instruction. (T. 2/29/16 at 27; T. 3/1/16 at 16-17, 80-84)

The trial court's decision to shackle a defendant is reviewed for abuse of discretion. *State v. Williams*,195 Conn. 1, 7 (1985). H[redacted]'s two motions for mistrial preserve this issue for appeal. If this Court should disagree, H[redacted] raises it under the familiar four prongs of *State v. Golding*, 213 Conn. 233 (1989) as modified by *In re Yasiel R*, 317 Conn. 773 (2015). The transcripts are adequate to review this claim. It affects the defendant's federal and state constitutional due process rights. And, for the reasons discussed below, the error was not harmless beyond a reasonable doubt.

In the alternative, pursuant to Practice Book § 60-5, this Court "may in the interests of justice notice plain error not brought to the attention of the trial court." In order for this Court to address a claim of plain error, it "first must determine if the error is indeed 'plain' in the sense that it is patent or readily discernable on the face of a factually adequate record, and also obvious in the sense of not debatable." *State v. Myers*, 290 Conn. 278, 287 (2009). The second prong of the plain error doctrine is that the defendant must "demonstrate[] that the failure to grant relief will result in manifest injustice." *Id.* at 288. Here, H[redacted]'s appearance before the jury in shackles was plainly erroneous – the trial court should have inquired about whether the pro se defendant was restrained when the marshals returned him to the courtroom, before the jury entered. As set forth below, his appearance in shackles resulted in a manifest injustice.

Finally, the defendant asks this Court to reverse his conviction under its supervisory powers, as was done in *State v. Rose*, 305 Conn. 594, 612 (2012) (pro se defendant tried in

prison clothing and leg shackles). Compelling a defendant to stand trial before a jury in identifiable prison clothing undermines the integrity of the defendant's trial and diminishes the perceived fairness of the judicial system as a whole. *Id.* Allowing a pro se defendant to appear before the jury in visible shackles, without any reason evident in the record, likewise undermines the integrity of the defendant's trial and diminishes the perceived fairness of the judicial system as a whole.

B. The Trial Court Has the Obligation to Protect the Defendant's Presumption of Innocence by Permitting him to be Shackled in front of the Jury only with the Proper Findings on the Record, which are Absent Here.

The right to appear in court free of shackles is deeply rooted in American history and tradition. *Deck v. Missouri*, 544 U.S. 622, 626-27 (2005); *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997). The prohibition against restraints affects the defendant's right to the presumption of innocence, the represented defendant's ability to communicate with counsel and to participate in his own defense, and the dignity and decorum of the court's proceeding. *Deck v. Missouri*, 544 U.S. 622, 626-27, 630-31 (2005); *Illinois v. Allen*, 397 U.S. 337, 344 (1970) (physical restraints detract from dignity and decorum of court proceedings, and on that basis alone are disfavored). See also, Amicius Brief of Former Judges, et als, *United States v. Sanchez-Gomes*, United States Supreme Court, No. 17-312 (awaiting oral argument).

Recently, our Supreme Court wrote that,

> [a]s a general proposition, a criminal defendant has the right to appear in court free from physical restraints.... Grounded in the common law, this right evolved in order to preserve the presumption favoring a criminal defendant's innocence, while eliminating any detrimental effects to the defendant that could result if he were physically restrained in the courtroom.... The presumption of innocence, although not articulated in the [c]onstitution, is a basic component of a fair trial under our system of criminal justice.... Nonetheless, a defendant's right to appear before the jury unfettered is not absolute.... A trial court may employ a reasonable means of restraint [on] a defendant if, exercising its broad discretion

> in such matters, the court finds that restraints are reasonably necessary under the circumstances." (Citation omitted; internal quotation marks omitted.) *State v. Webb*, 238 Conn. 389, 454-55, 680 A.2d 147 (1996). Despite the breadth of that discretion, however, "[t]he law has long forbidden routine use of visible shackles during the guilt phase; it permits a [s]tate to shackle a criminal defendant only in the presence of a special need."

State v. Brawley, 321 Conn. 583, 587 (2016).

The Fifth and Fourteenth Amendments to the United States Constitution "prohibit the use of physical restraints visible to the jury absent a trial court determination, in the exercise of its discretion, that they are justified by a state interest specific to a particular trial". *Deck v. Missouri*, 544 U.S. 622, 626-27, 629 (2005). The trial court had the obligation to ensure that Harvin did not appear before the jury in shackles absent a compelling reason stated on the record. *State v. Brawley* at 588-89; *State v. Williams*, 195 Conn. 1, 7 (1985) (trial court has duty to maintain decent order in the court room, must balance right of defendant to appear in court free of restraint with need for precautionary measures); Practice Book § 42-46. See *State v. Rose*, 305 Conn. 594 (2012) (trial court first raised issue of keeping defendant in shackles); *State v. Shashaty*, 251 Conn. 768 (1999) (trial court told defendant he would remain in shackles during trial). See also *Carey v. Musladin*, 549 U.S. 70, 82 (2006) (Souter, J., concurring) (judges have an "affirmative obligation to control the courtroom and keep it free of improper influence").

The trial court has broad discretion to use restraints when their use is justified on the record. However, "discretion has long meant a discretion that is not exercised arbitrarily or wilfully, but with regard to what is right and equitable under the circumstances and the law, and directed by the reason and conscience of the judge to a just result." *State v. Williams*,195 Conn. 1, 7 (1985). This is not a case like *Sekou v. Warden*, 216 Conn. 678 (1990) or *State v.*

Woolcock, 201 Conn. 605 (1986) where there was an obvious reason for the trial court to order the defendant shackled. H[redacted] was in the community on bond until the morning of February 29th. H[redacted]'s family posted the increased bond and he returned to the community at about 10:30 p.m on the 29th. (T. 3/1/16 at 18) His bond was not increased for a security issue. H[redacted] had never been disruptive. There was no reason for H[redacted] to be shackled other than it was the marshals' custom to do so – the shackles were applied without discretion, with no consideration for their need in this case.

> [B]efore a defendant is subjected to the humiliating prospect of pleading his case in chains, a trial judge must make an inquiry regarding the necessity for the restraints — even if no jury is present. In my view, the trial court's responsibility to satisfy itself by means of such inquiry may not be delegated to the federal marshals or other custodial personnel; a trial court may not hand over to others this duty which, like any other facet of running its courtroom, is imposed on it. * * * The fact that the proceeding is non-jury does not diminish the degradation a prisoner suffers when needlessly paraded about a courtroom, like a dancing bear on a lead, wearing belly chains and manacles. * * * Here the trial court totally abdicated that responsibility. The defendant was brought into the courtroom in chains, and the court — rather than inquiring into their necessity — stated that it declined to get involved; instead the decision as to how defendant was to appear was made by his jailors.

United States v. Zuber, 118 F.3d 101, 105-06 (2nd Cir. 1997) (Cardamone, J., concurring). See also *Maus v. Baker*, 747 F.3d 926, 927 (7th Cir. 2014) ("[t]he sight of a shackled litigant is apt to make jurors think they're dealing with a mad dog"). Whenever a defendant is in custody and is in the courtroom with the jury present, it is the trial court's obligation to determine whether he or she is in restraints, and whether those restraints are necessary. Its failure to exercise discretion and to leave the matter to the marshals is an abuse of its discretion.

C. The Trial Court's Violation of H[redacted]'s Constitutional Rights is Separate from its Denial of the Motions for Mistrial.

The State may argue that the question before the Court is not the trial court's failure to

control the courtroom and ensure that the defendant did not appear before the jury in shackles, but its discretion to deny the motions for mistrial, which has a more favorable standard of appellate review.

> In our review of the denial of a motion for mistrial, we have recognized the broad discretion that is vested in the trial court to decide whether an occurrence at trial has so prejudiced a party that he or she can no longer receive a fair trial. The decision of the trial court is therefore reversible on appeal only if there has been an abuse of discretion. If a curative action can obviate the prejudice, the drastic remedy of a mistrial should be avoided. [A]s a general matter, the jury is presumed to follow the court's curative instructions in the absence of some indication to the contrary.

(Internal citation and quotation marks omitted) *State v. Roberto Q.*, 170 Conn. App. 733, 746 (2017). If the trial court improperly allowed H[redacted] to be shackled in the jury's view, then that mistake must be reviewed under the appropriate standard. If the Court concludes that the trial court did not abuse its discretion, then it would reach the issue of whether a mistrial should have been granted once the shackles became obvious.

Having been denied a mistrial, H[redacted] agreed to a curative instruction as his only alternative, but he did not concede that a curative instruction would cure the mistake. (T. 2/29/16 at 26) This is akin to *State v. Shashaty*, 251 Conn. 768, 786 (1999) where the defendant's questions to the jury about whether his shackles would prejudice them did not waive the shackling issue for review.

If the trial Court had granted a mistrial, this case could have been moved to the top of the firm jury list, and re-tried after the defendant had an opportunity to resolve any question about his finances with the Public Defender, to recover from his illness, and, if still pro se, to

properly subpoena his witnesses.[12] Had H[redacted] been represented by the Public Defender, he would never have had to approach a witness, which made the shackles obvious to all.

D. The State Cannot Prove, Beyond a Reasonable Doubt, that the Shackling Error did not Contribute to H[redacted]'s Convictions.

If the trial court had, without adequate justification, affirmatively ordered H[redacted] to wear shackles that were seen by the jury, he would need not demonstrate actual prejudice to show a due process violation. The State would be required to prove beyond a reasonable doubt that the shackling error complained of did not contribute to the verdict obtained. *Brawley* at 588-59. Here, the trial court's inaction, and tacit acceptance of the marshal's policy is the equivalent of an affirmative improper shackling order. H[redacted] preserved this issue with his mistrial motions. The State should be required to prove the harmlessness of the erroneous shackling on the verdict.

There is no dispute that H[redacted]'s restraints were obvious to the jury. This is not a case like *State v. Brawley*, 321 Conn. 583 (2016); *State v Canty*, 223 Conn 703 (1992) *State v. Tweedy*, 219 Conn. 489 (1991); *State v. Woolcock*, 201 Conn. 605 (1986); or *State v. Gonzalez*, 167 Conn. App. 298 (2016), where there was no evidence that the jury saw the

---

[12]See T. 2/29/16 at 79-82; 3/1/16 at 3, 22-26; 3/2/16 at 12-13 (pro se defendant was unable to properly subpoena witnesses). The trial court had accepted H[redacted]'s fee waiver for his subpoenas on February 29th. (T. 2/29/16 at 11-12, 78-84, 122-28) H[redacted]'s efforts to contact his defense witnesses had been impeded by his illness over the weekend, and then by his being taken into custody. (T. 2/29/16 at 79-80; 3/1/16 at 2-3) H[redacted] and his standby attorney said they had been confused about the mechanics of having the subpoena issued. (T. 3/1/16 at 18-22, 26-27, 54-56; 3/2/16 at 4-13).

The net result was that H[redacted] was unable to offer his witness' testimony, and had to settle for having three documents admitted as full exhibits instead – Ex. H; Ex. C (T. 3/2/16 at 14) and Ex. I (Ex. 3/2/16 at 14-17). H[redacted] read portions of Ex. C, H, and I to the jury. (T. 3/2/16 at 20-23)

restraints.[13] There was no dispute that the restraints were obvious. Any jurors that did not see them learned of them from the trial court's limiting instruction.

The effects of the defendant appearing before the jury in shackles risks corrupting the trial in subtle ways.

> Jurors may speculate that the accused's pretrial incarceration, although often the result of his inability to raise bail, is explained by the fact [that] he poses a danger to the community or has a prior criminal record; a significant danger is thus created of corruption of the [fact-finding] process through mere suspicion. The prejudice may only be subtle and jurors may not even be conscious of its deadly impact, but in a system in which every person is presumed innocent until proved guilty beyond a reasonable doubt, the [d]ue [p]rocess [c]lause forbids toleration of the risk. Jurors required by the presumption of innocence to accept the accused as a peer, an individual like themselves who is innocent until proved guilty, may well see in an accused garbed in prison attire an obviously guilty person to be recommitted by them to the place where his clothes clearly show he belongs. It is difficult to conceive of any other situation more fraught with risk to the presumption of innocence and the standard of reasonable doubt.

State v. Rose, 305 Conn. 594, 609-10 (2012) quoting *Estelle v. Williams*, 425 U.S. 501, 518-19 (1976) (Brennan, J., dissenting).

The *Rose* court continued:

> The gravamen of *Estelle* is that compelling a defendant to stand trial in identifiable prison clothing is unfair not merely because it 'inject[s] ... improper evidence of the defendant's imprison[ment] status into the presentation of the case,' as the state observes, but also, more fundamentally, because the defendant's appearance in prison clothing invites and indeed tempts jurors to draw highly unfavorable inferences about his character and likely conduct. * * * a defendant's appearance in identifiable prison clothing does something substantially worse than inject improper evidence into the case, namely, it causes jurors to deliberate under a cognitive bias. Because this bias is subtle and ever present, jury instructions may not be adequate to cure it.

---

[13]Had the jury not seen the shackles, then this Court would likely find any error harmless. See *State v. Brawley*, 321 Conn. 583, 592 (2016); *State v. Woolcock*, 201 Conn. 605, 617 n. 5 (1986) (appellate court will not find error on the ground that the defendant was shackled unless it is shown that the jury saw the shackles).

Id. at 610. The effect of leg shackles is no less insidious, particularly where many of the issues before the jury were issues of intent.[14] As H[redacted] himself said, the jury was not told why he was shackled or why he had not been in court on the prior Friday, and might have inferred, for example, that he had been arrested over the weekend. (T. 3/1/16 at 8, 82) The shackles put "a dark cloud" over his presumption of innocence – "you look already guilty, you look to be already in custody. And being in custody means that you are guilty at that point of something." (T. 3/1/16 at 82)

The trial court's efforts at a curative instruction did not make the shackling error harmless. In *Maus v. Baker*, 747 F.3d 926, 927-28 (7th Cir. 2014), the trial court made no effort to hide the defendant's shackles and did not give a curative instruction. In response, the Court wrote:

> Curative instructions have (as judges too rarely acknowledge) only limited efficacy. As we said in *United States v. Mazzone*, 782 F.2d 757, 764 (7th Cir.1986), "we are not quite so naïve as to believe that telling jurors not to think about something will cause them to forget it." Justice Jackson once remarked that "the naïve assumption that prejudicial effects can be overcome by instructions to the jury all practicing lawyers know to be unmitigated fiction." *Krulewitch v. United States*, 336 U.S. 440, 453, 69 S.Ct. 716, 93 L.Ed. 790 (1949) (concurring opinion) (citation omitted); see also *Nash v. United States*, 54 F.2d 1006, 1006-07 (2d Cir.1932) (L. Hand, J.). A "curative" instruction can even have negative efficacy. To tell jurors to ignore shackles may rivet the jurors' attention on them, see, e.g., Dan Simon, *"More Problems with Criminal Trials: The Limited Effectiveness of Legal Mechanisms,"* LAW & CONTEMPORARY PROBLEMS, vol. 75, no. 2, pp. 167, 176-77 (2012), especially if the judge explains to the jury why the plaintiff is shackled-that he's a violent, dangerous person. A truthful explanation for the shackles will be highly prejudicial-but without an explanation the jurors are left to wild conjecture.

The trial court gave the jury no explanation for why H[redacted] had suddenly been shackled;

---

[14]During deliberations, the jury asked the Court about the terms "is aware of" and "consciously disregards" with regard to the reckless endangerment counts. (T. 3/3/16 at 6-15; Ct.Ex. 7)

having moved freely earlier in the trial. On Friday, the Court had told the jury that H[redacted] was not present in court "due to circumstances beyond our control" and that "illness of any kind by any party or attorney or illness of anyone who has had anything to do with this matter is certainly not something that's relevant to your determination and sympathy of any kind for anyone should not factor into your deliberation in any way."[15] (T. 2/26/16 at 5) The jury was unaware that H[redacted] had taken ill, that he had been seen in the emergency room, and that the trial court apparently felt that his excuse was inadequate, had increased his bond, and had him taken into custody. It is hard to imagine any curative instruction that would have prevented jury conjecture without strongly implying that the trial court felt that H[redacted] was not credible and influencing the jury's verdict in a different manner.

The State cannot beyond a reasonable doubt that the shackling error complained of did not contribute to the verdict obtained.

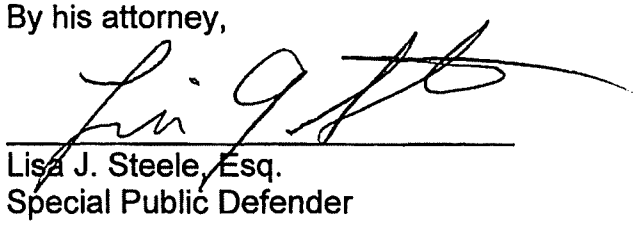
CONCLUSION

For the reasons set forth herein, H[redacted]'s convictions should be reversed, and the case remanded for new trial.

---

[15]On Thursday afternoon, H[redacted]'s standby attorney responded to the State's request to follow-up once more, by saying "I'd like to leave now, if I may, please. Your under understands I have a very serious medical condition. I just can't –" (T. 2/25/16 at 127) After the jury was sent home, the State accused standby counsel of trying to garner sympathy by mentioning his medical condition in front of the jury. (T. 2/25/16 at 128) The Court offered to consider a request for instructions. (T. 2/25/16 at 129)

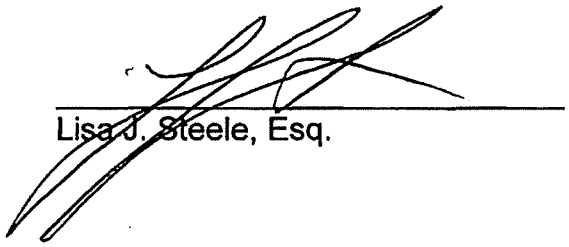
Respectfully submitted
The Defendant
By his attorney,



Lisa J. Steele, Esq.
Special Public Defender
Juris No. 410490
Steele & Associates
P.O. Box 547
Shrewsbury, MA 01545
(508) 925-5170 (phone/fax)
steelelaw@earthlink.net

CERTIFICATION

Pursuant to Practice Book § 62-7, the undersigned certifies that this brief complies with Practice Book § 67-2.



Lisa J. Steele, Esq.

NO: K10K-CR14-[redacted]-S
K10K-MV14-[redacted]-S : SUPERIOR COURT

STATE OF CONNECTICUT : JUDICIAL DISTRICT
OF NEW LONDON

v. : AT NEW LONDON, CONNECTICUT

MARCUS H[redacted] : FEBRUARY 18, 2016

HEARING -- EXCERPT

BEFORE THE HONORABLE BARBARA BAILEY JONGBLOED, JUDGE

A P P E A R A N C E S :

REPRESENTING THE STATE OF CONNECTICUT:

ATTORNEY SARAH BOWMAN
ATTORNEY GRAYSON HOLMES
State's Attorney's Office
112 Broad Street
New London, Connecticut 06320

REPRESENTING THE DEFENDANT:

ATTORNEY JOHN R. WILLIAMS
John R. Williams & Associates, LLC
51 Elm Street
New Haven, Connecticut 06510

Ordering Party: Lauren Weisfeld,
Attorney for Defendant on Appeal

APPENDIX F

THE COURT: Good morning everyone. And this is the matter of the State of Connecticut versus Marcus H[redacted]. Could we have the appearances for the record, please.

ATTY. BOWMAN: Yes, Your Honor. Good morning. Sarah Bowman, Assistant State's Attorney for the State.

ATTY. HOLMES: Grayson Holmes, Your Honor, Special Deputy Assistant State's Attorney.

ATTY. WILLIAMS: Morning, Your Honor. John Williams for Mr. H[redacted], who's here with me.

THE COURT: All right, thank you. And I should indicate that I did receive the report with regard to Mr. H[redacted]'s conditions of release, and it is a positive report in the sense that he does appear to be in full compliance with his requirements, correct?

ATTY. BOWMAN: Yes.

ATTY. WILLIAMS: Yes, Your Honor.

THE COURT: All right. All right, so we are scheduled today to begin again our jury selection. Sir, if you have a question or if there's something you wanted to say, you should talk to Mr. Williams first.

ATTY. WILLIAMS: Yes, he did speak with me first, Your Honor. I notified counsel, Mr. H[redacted] advised me this morning that he wishes to move to substitute another attornev not yet selected.

THE COURT: Well --

THE DEFENDANT: Can I be heard, please?

THE COURT: You may.

THE DEFENDANT: First and foremost, I want you to know that I respect your position and your time. This is not a ploy to buy time or to prolong things. It's just that I want to invoke my right, my Sixth Amendment right, to have a conflict-free attorney. And with John and I, whenever we have discussions, it's never conflict-free, and I feel at this point that his assistance to me would be ineffective. He made a few comments yesterday when we met that were very alarming. My father was in attendance. He's not in here as of now, but he was alarmed by the comments as well.

After our meeting, I got in contact with a few people and got contact information for other attorneys, and my mom was present in our conversation in the hallway, and she wasn't too pleased with it as well. Again, I'm not trying to waste anybody's time. I just want to have my opportunity for justice without any issues on my end.

THE COURT: Ms. Bowman?

ATTY. BOWMAN: Your Honor, we've been through this. This case has been pending for almost two years. We've been on the eve of trial several times. This defendant started out with another attorney,

Jack O'Donnell from New Haven. He started with him. After six months of negotiations on the verge of trial with him, he was terminated, and counsel, John Williams, Attorney John Williams, was brought into the case. On the eve of trial, I want to say in August or September, we were back and forth between hiring another attorney, Sebastian DeSantis, who had discussions with Mr. H[redacted] down in lockup. That never came to fruition. Literally, after picking the jury, on the eve of trial, trial morning, the 54-56d was filed, thus delaying the trial again. I do believe that this is a stall tactic. I do believe that this is an effort to waste the Court's time, and I do think it should be denied.

THE DEFENDANT: Your Honor?

THE COURT: Sir?

THE DEFENDANT: In regards to Attorney O'Donnell, I filed a grievance against him, and in the grievance, he agreed, he actually admitted to his wrongdoing in the situation for us to separate from each other. I don't have a copy of it with me right now, but I could provide it for you very soon, if need be. And what the -- in reference to the -- DeSantis, Attorney DeSantis, my family wasn't able to get the money to him at the time that he needed it to become my representation.

And with the competency hearing, it's an issue

that I was really dealing with. That is the reason why I raised it to the Court. None of those instances were to waste time. It's -- I wasn't -- it wasn't even that I wasn't getting along with Attorney O'Donnell. He used some out-of-the-way language towards me, and we -- I addressed it to Judge McMahon, and Judge McMahon, you know, basically asked him, and he admitted that we had words that shouldn't have been used. He admitted that in court, and actually, I have the transcript with him admitting that as well.

None of this is to waste any time. My life is on hold as this case goes on anyways. I just got out of jail maybe three months ago. I'm not doing anything. I'm unemployed. I hardly see my children. It's not like I'm going out having fun each and every day. This stalls my life, and I just want my proper opportunity to be heard, and if I don't -- if the person that is my voice is not even on the same accord with me, it makes it impossible for my side to be heard. That's the only thing that I want to be known. I'm not asking for a year. I'm just asking for just a short period of time.

THE COURT: Well, let me just -- anything else the State -- yes.

ATTY. BOWMAN: This defendant's been out of jail since September, Your Honor. It's been five months,

and the competency result was -- I believe December the 8th was our hearing here before Your Honor when he was found competent, and it was stipulated to. Between December 8th and today's date, which we've had for now I guess six weeks - no, more than that, almost two and a half months - nothing has been done, no indication that he has been hiring or looking for other attorneys until yesterday.

I know that Attorney Williams did allude to the fact that there was somewhat of a breakdown before the 54-56d was filed, and that was part of the reason for that to be filed. However, again, there's been since December the 8th of last year that we've been going through this.

THE DEFENDANT: Just one more -- please. I've actually been out since October 23rd, not September, and as I previously stated, the final incident to make me come to that decision happened on yesterday. I can only, you know, notify you today because it happened on yesterday at close of business, so that's why you're only hearing about it on today. If it were -- had been any other time, I -- I don't know. I could have found which paperwork to file to notify you ahead of time, but unfortunately, it happened yesterday.

THE COURT: Well, you're not here today with another attorney standing by ready to file an

appearance, and the Court has concerns about that. You have known for a very long time that we're scheduled for jury selection today.

THE DEFENDANT: I do have here, for now, a pro se appearance.

THE COURT: Well, just for the record, I did want to indicate that I believe it was December 16th that we met and discussed the schedule for this case and picked today's date for the start of jury selection after having discharged a jury which was already selected, so I certainly have some serious concerns about that. Your claim today is that there is a breakdown in the relationship between you and Mr. Williams?

THE DEFENDANT: Very much so, and my --

THE COURT: And --

THE DEFENDANT: If possible, if need be, my mom can attest to it. It's truly a breakdown. It's not just me that sees it. It's my two parents as well.

THE COURT: Mr. Williams, is there anything you wanted to add?

ATTY. WILLIAMS: There's no breakdown whatsoever, except that Mr. H[redacted] decided this morning that he wants another lawyer. And as far as I'm concerned, I am ready to go forward with the trial. I told Mr. H[redacted] that, while we certainly have our disagreements, one of them about what I

think is likely to be the outcome of the case, but I assured Mr. H[redacted] that yesterday and his dad, and his dad expressed great pleasure and personal warmth towards me, and never was there a hint that there was any disagreement between Mr. H[redacted] and me as of the time he left my office yesterday. This morning, his father isn't here. His mother's here, and he and his mom -- or he, really, indicated that he's decided that there's a conflict of interest between the two of us. I don't believe there is, but I suggested to him that he had every right to bring it to Your Honor's attention, and Your Honor would do what you think is best.

THE COURT: All right, anything else, Ms. Bowman?

ATTY. BOWMAN: No, Your Honor.

THE COURT: All right, well, let me just take a couple of minutes to think about this issue. Certainly, it's troubling to the Court that you raise this now when we are ready to start. We have a panel of jurors standing by, ready to begin our jury selection, but I will just take a moment to think about your claim, so we'll take a brief recess.

(Recess.)

THE COURT: All right, good morning again. I've had an opportunity to think a little bit about what's been stated so far this morning, and I have a few

more questions for you, sir. You said a couple of different things earlier, and I just want to make sure we're very clear as to what you're indicating at this time. You said that you wanted to have another attorney represent you, and then I also thought I heard you say you wanted to file a pro se appearance.

THE DEFENDANT: That's what I was gonna do, alongside with him. I said -- you -- sorry. I mean, because when you said you -- your concerns were that no one was here to file an appearance. That's just in case I brought a pro se appearance for the time being.

THE COURT: Well, I guess my question is are you asking to represent yourself?

THE DEFENDANT: I actually -- no, I want another attorney. However, I thought that, you know, I would have to file on my behalf, seeing that I would have no representation until I've signed with another attorney.

THE COURT: Well, if you don't want to represent yourself, then that's fine.

THE DEFENDANT: Yeah.

THE COURT: I want to be clear on that.

THE DEFENDANT: No, I want --

THE COURT: All right, then. With regard to your request for additional time within which to hire another attorney, I am going to deny that request

today. You've had very -- you know, many, many opportunities prior to today to pursue that, if that was something you wished to do. I understand you're saying that this was something that came up yesterday. I note that -- I think we're all well aware of the history here, that you've had discussions with Attorney Williams throughout, and it may be that you have -- he may have advice for you that you're not necessarily in agreement with, but that does not mean by any stretch that he is not obligated as an attorney to represent you zealously. I will let you know that Mr. Williams is a very experienced trial attorney who will do everything he can to defend you in this case, and I'm very confident in that fact. You should be confident in that as well.

THE DEFENDANT: It's not the fact of -- I know he has a very prestigious background. That's the reason why we chose him. But it was just, he made a very alarming comment that I wasn't going to actually bring up, but my father was saying how he felt that, in this area, the cards were stacked up against me. He told me wherever I went, he feels that the cards would be stacked up against me, partly because I didn't finish paying him.

I can prove that to you 100% that he used that, so, I mean, that is what has me doubting that he is

going to properly represent me, because if you're saying that part of the reason the cards are stacked against me is because you haven't gotten all of your payment, that's -- you know, that's kind of scary. And like I said, my father, who's not present at the moment, was a witness to it, and my father told my mother, Stephanie H[redacted], who's present, exactly what was said, and that's very alarming. I understand that, you know, the time has been going and everything, and he's never said anything like that before, up until yesterday.

ATTY. WILLIAMS: Your Honor, I'd like to respond to that.

THE COURT: Mr. Williams.

ATTY. WILLIAMS: It is, in fact, the case that Mr. H[redacted] has paid less than half of the fee that was agreed upon in our retainer agreement, and in fact has -- there's been no payment made for many, many months. It is true that, during our meeting yesterday, I brought up that fact, and he said he was unemployed, and I said I understood that. I said that I did feel that he and his mother both had made commitments that had not been honored, and I thought that that was most unfortunate, but I told him expressly and more than once that under no circumstances would that in any way, shape, or form affect my commitment to him to doing the best that I

can in what I do consider to be an unbelievably difficult case; that, although he has not honored his commitment to me financially, nor has his mother, that I am not in any way, shape, or form affected by that in doing what I need to do in this court to honor my professional obligations.

THE COURT: All right.

THE DEFENDANT: And like I stated, I can prove factually that he said it. I was actually having a transcript of our conversation drafted up.

THE COURT: Well, even accepting you at your word with regard to that statement, you just heard Mr. Williams say, and we've all heard Mr. Williams just say, that in no way is that in any way affecting his representation of you.

THE DEFENDANT: That's what he's saying on today, but what he said to me in private, off the record, was that because of the fact he wasn't paid is part of the reason the cards are stacked up against me.

THE COURT: Well, certainly -- Ms. Bowman?

ATTY. BOWMAN: I guess I'm confused, Your Honor, at this point whether -- if Mr. H[redacted] is going to continue pro se until he hires someone else, if, in fact, he decides to not allow Attorney Williams to represent him, as he has stated that he is willing and more than able to do.

THE COURT: Well, I had understood Mr. H[redacted] to indicate that he did not want to represent himself pro se. Correct, sir?

THE DEFENDANT: I do not. That's not my wish or motive. My motive is to hire a private attorney. As I specified to you earlier, I have the name of a few that some associates of my family have spoken to, and I know that, you know, it's your job to do everything in discretion. I'm just, you know, I'm pleading as it being my constitutional right to have an attorney that I trust and that I believe in. Of course, he's saying it to you guys now, and I know he's been a great attorney to others, but I know what he said to me, and I know that my case will not be handled in -- with his fullest abilities, because, he said, of the money issue.

And that's what I'm trying to stress to you is that it's really not at all any ploy for any more time. Like I said, I have no life. I have no life, but I do know that I have substantial amounts of information that can prove my part, my argument, in the whole case. And being that I'm not well versed in law is the only reason why I wouldn't go full-force on my own. I just really, really need another attorney. I'm not comfortable with going on, especially with the consequences that I can bear in losing in this situation.

THE COURT: All right, anything else, Ms. Bowman?

ATTY. BOWMAN: Your Honor, I think that this is prolonging the inevitable. He is -- this is -- I feel like we've heard this time and time again for different reasons in different motions. I don't think that there is any question as to Attorney Williams's professionalism and more than competence in -- to handle this case. I guess the question I would ask Your Honor to make is if we go forward with him pro se, or if Attorney Williams stays with him until he finds someone else if he wishes to do that, but going forward today, regardless.

THE COURT: All right, well, I don't hear the defendant asking to represent himself pro se.

THE DEFENDANT: No.

THE COURT: So, I interpret what he's requesting at this moment as a request for a continuance within which to obtain new, private counsel.

THE DEFENDANT: In a reasonable amount of time, too. I'm not asking for two months.

THE COURT: All right, well, I'm gonna let you know, sir, at this time, that request is denied. There has been a considerable period of time from the beginning here, and the time within which you've had to work with Attorney Williams throughout, and I accept Mr. Williams's word with regard to his

undertaking his obligations to represent you. I have no doubt that he will do everything in his power to represent you to the best of his ability. And I understand that you had some questions about that as a result of that conversation yesterday. It may be the way something was worded that gave you some cause for concern, but I'm letting you know that you should certainly not be concerned at this point that Mr. Williams is going to honor his professional obligations under all the circumstances and represent you to the best of his ability. You had every opportunity prior to today within which you could have had an attorney here this morning, a different attorney, if you wished to do that. You haven't done that, so I'm gonna deny your request for a continuance, and we are going to proceed with jury selection at this time.

All right, anything else, then, before we bring in the panel?

ATTY. BOWMAN: Your Honor, just one -- I did -- was looking through the voir dire questionnaires. I just wanted to point out that there is one individual who is over 70, and I know we've had that on another case in which I'm not sure if the person realized that they were exempt if they wanted to be. And if I could just clarify so I don't misspeak, it's $50 a day from the State for the first --

THE COURT: Five days.

ATTY. BOWMAN: -- five days.

THE COURT: Today would be day one of those five days.

ATTY. BOWMAN: Okay, thank you.

THE COURT: I'm sorry, it's after the first five days.

ATTY. BOWMAN: Okay.

THE COURT: So, the employer is obligated for the first five days.

ATTY. BOWMAN: If they're fulltime.

THE COURT: Yes, and then there are certainly some issues with regard to whether they're a fulltime employee. Some employee -- employers will cover the whole jury service regardless of the length of it, so it's really an individual thing. And normally, what we do is just check with each juror to make sure that they're comfortable with whatever their arrangements are, but after the first five days, generally --

ATTY. BOWMAN: Okay.

THE COURT: -- their employer is no longer obligated, at which time the State will come in and pick it up at $50 a day.

ATTY. BOWMAN: Thank you.

THE COURT: All right. Sir?

THE DEFENDANT: One last question.

THE COURT: Yes.

THE DEFENDANT: If, in fact, I did go pro se, we would just do the jury selection just me by myself on today?

THE COURT: Well, if you were thinking about representing yourself pro se, the Court would need to ask you a lengthy series of questions to determine your -- whether you're able to represent yourself pro se, and that would be a separate issue, but I didn't hear you -- that you were asking for that.

THE DEFENDANT: Really, if -- I don't want to be stuck in a situation where, again, I feel uncomfortable, and I have the appearance forms here to file pro se, and if I -- if it's a situation where it's pro se or staying with Attorney Williams, then I'd rather just go pro se.

THE COURT: All right, well, I've denied your request for additional time within which --

THE DEFENDANT: Yeah.

THE COURT: -- to hire an attorney. Do you understand that?

THE DEFENDANT: Yes, yes.

THE COURT: Now, you're saying you are requesting --

THE DEFENDANT: Yes.

THE COURT: -- to proceed pro se?

THE DEFENDANT: Yes.

ATTY. BOWMAN: Your Honor?

THE COURT: Ms. Bowman?

ATTY. BOWMAN: My concern is that now, we are setting ourselves up for -- Mr. H[redacted] is setting himself up for a habeas issue in that he's first said he's not comfortable representing himself and, once the continuance request was denied, now he is, which is going to go straight up for, you know, ineffective assistance of counsel and that he didn't have adequate representation on a habeas. I would ask that he not be allowed at this point to represent himself.

THE DEFENDANT: The reason why I decided to do pro se was because you heard my whole argument against my representation. That is my reasoning for it.

THE COURT: All right, well, let's just take another brief recess, and I'll be back.

(Recess.)

THE COURT: All right, good morning again. Anything else anyone wishes to add at this point?

ATTY. BOWMAN: No, Your Honor.

THE COURT: All right, well then, sir, in connection with your request to proceed pro se, do I understand that that is your request at this time?

THE DEFENDANT: Yes.

THE COURT: All right, I am gonna ask you some questions in connection with that request. First of

all, how old are you?

THE DEFENDANT: Twenty-seven.

THE COURT: And how far did you go in school?

THE DEFENDANT: I did --

THE COURT: Pardon me?

THE DEFENDANT: I did two years of college, so --

THE COURT: All right, and you're not currently working? You said that before.

THE DEFENDANT: Yes.

THE COURT: Have you worked in the past?

THE DEFENDANT: Yes.

THE COURT: And where have you worked?

THE DEFENDANT: AT&T.

THE COURT: And how long did you work there?

THE DEFENDANT: Three years.

THE COURT: And when was that?

THE DEFENDANT: From November, 2011 until December, 2014.

THE COURT: All right, and what was the nature of your employment there?

THE DEFENDANT: I was a retail sales consultant.

THE COURT: All right, and have you ever been on trial before?

THE DEFENDANT: Never.

THE COURT: All right, have you ever represented yourself in any capacity at all? Any kind of civil

matter or administrative matter or anything of that nature?

THE DEFENDANT: No.

THE COURT: No?

THE DEFENDANT: No.

THE COURT: All right.

THE DEFENDANT: No, ma'am.

THE COURT: And obviously, you've had an opportunity to speak with Mr. Williams throughout, and so I know you understand what he's been doing so far. You certainly understand all of the charges that you're facing here, correct?

THE DEFENDANT: Yes.

THE COURT: And I know that those have been reviewed with you on many occasions, including with Judge Strackbein, and you've heard them set forth at length during our previous jury selection, but just to review those one more time, you understand that there are ten counts --

THE DEFENDANT: Yes.

THE COURT: -- pending against you.

THE DEFENDANT: I just looked over it.

THE COURT: Assault in the second degree with a motor vehicle; two counts of risk of injury to a child; two counts of reckless endangerment in the first degree; reckless driving; operating a motor vehicle under the influence of intoxicating liquor;

operating a motor vehicle with an elevated blood alcohol content; interfering with an officer; and increasing speed in an attempt to escape or elude an officer. Do you understand that those are all the charges?

THE DEFENDANT: Yes.

THE COURT: And has it been reviewed with you what the elements of each of those offenses are?

THE DEFENDANT: Yes.

THE COURT: And you understand those?

THE DEFENDANT: Yes.

THE COURT: And you also understand the maximum possible penalties associated with each of those charges, correct?

THE DEFENDANT: Yes.

THE COURT: All right, and I know that that's something that you would have reviewed with Judge Strackbein, but I think -- was the maximum possible exposure here, was it 32 years, and then there were some mandatory minimums as well? Ms. Bowman?

ATTY. BOWMAN: That's what I'm looking at, Your Honor. I had, with the addition of the pursuit, I thought it was 40 years --

THE COURT: All right.

ATTY. BOWMAN: -- and 30 days.

THE COURT: All right, and the mandatory minimums?

ATTY. BOWMAN: Were the 120 on the DUI, the second DUI.

THE COURT: As a second offender.

ATTY. BOWMAN: Yes.

THE COURT: All right, and so you understand that that's a substantial number of charges, and that those are -- each of those charges has a number of elements, and it's a fairly complicated matter that the State is going to be putting on witnesses and offering evidence to in an attempt to prove each of those charges beyond a reasonable doubt. You understand all of that?

THE DEFENDANT: Yes, I do.

THE COURT: All right, and I don't believe there are any pretrial motions pending at this point, correct?

ATTY. BOWMAN: No, Your Honor.

THE COURT: All right, and so are you aware that you had the ability to file pretrial motions if you wished to do that?

THE DEFENDANT: Yes.

THE COURT: All right, and are you familiar with the rules of procedure and the rules of evidence that govern criminal cases?

THE DEFENDANT: Yes, I've been doing a lot of research on it.

THE COURT: All right, so you do feel that you

have an understanding of those things?

THE DEFENDANT: Pretty good, yeah.

THE COURT: All right. Obviously, even lawyers who have had the opportunity to go to law school and research these matters can find them to be complicated at times and present challenging issues. Do you feel that that's something that you're in a position to do and that you're in a position to understand?

THE DEFENDANT: Yes.

THE COURT: All right, and you understand that all of the rules of procedure and the rules of evidence apply, even when a defendant represents himself without the assistance of counsel. You understand that?

THE DEFENDANT: Yes.

THE COURT: And you understand that the Court cannot give you legal advice in conducting your defense of your case? Do you understand that?

THE DEFENDANT: Yes.

THE COURT: All right, and you understand that everything you say and do during your trial can affect the outcome of any appeal or any post-conviction remedies in the event you're found guilty. Do you understand that?

THE DEFENDANT: Yes, I do.

THE COURT: All right, you understand that a

competent, trained attorney possesses the skill and training to defend and protect your rights. A competent, trained attorney possesses the skill to assess the issues, to understand the strengths and the weaknesses in the prosecution's case, to make appropriate objections to evidence, and to preserve the record in the event of conviction for purposes of appeal --

THE DEFENDANT: Yes, I do.

THE COURT: -- and otherwise. Do you understand all of that?

THE DEFENDANT: Yes.

THE COURT: And you feel you also possess that kind of training, experience, and skill?

THE DEFENDANT: Not the training, but it's something that I feel that I'm capable of doing.

THE COURT: All right, and you feel that -- or do you understand that, as a layperson, you would be at a significant disadvantage, because you haven't had the training, for example, that Attorney Williams has had --

THE DEFENDANT: Yes.

THE COURT: -- and you understand that then you would be at a disadvantage and face certain dangers in representing yourself.

THE DEFENDANT: Yes.

THE COURT: Do you understand all of that?

THE DEFENDANT: Yes.

THE COURT: And you certainly understand you have the right to have counsel represent you and the right to effective assistance of counsel.

THE DEFENDANT: Yes.

THE COURT: And with regard to appointed counsel, certainly, if you couldn't afford an attorney, you would have the right to have an attorney appointed to represent you. However, in this case, you've retained Attorney Williams. You understand that, correct?

THE DEFENDANT: Yes.

THE COURT: So, under all of the circumstances, you are asking the Court to permit you to proceed to represent yourself in this case?

THE DEFENDANT: Yes.

THE COURT: All right, well, let me just inquire. I would be inclined, under all of the circumstances, to, at a minimum, appoint Attorney Williams as standby counsel to represent and assist the defendant. Obviously, Mr. Williams is here and prepared to proceed. Any position with regard to that?

ATTY. BOWMAN: I think that that is safe, Your Honor, especially in light of the fact that the defendant has previously stated that he is not -- was not comfortable going forward pro se. Now, all of a

sudden, he's done the research and does feel comfortable with the rules of procedure and evidence, as he just stated. I do believe this is again just a perverse attempt for a stall tactic.

I would just want to point out one inconsistency on the record. He stated he has never been to trial. We did have a hearing on the VOP, just so the record is clear, before Judge Handy of this court in which the defendant stood trial.

THE COURT: All right, and I appreciate having that information.

THE DEFENDANT: I was not aware that that was considered a trial. I just --

THE COURT: All right.

THE DEFENDANT: -- thought it was considered a hearing. That's what --

THE COURT: All right.

THE DEFENDANT: Yeah.

THE COURT: That was a contested hearing, and Attorney Williams represented you --

THE DEFENDANT: Yes, he --

THE COURT: -- in connection with that matter?

THE DEFENDANT: Yes, he did.

THE COURT: All right. All right, well, under the circumstances, I know that the record in this case is clear that there was a competency evaluation previously. The defendant was found competent to

stand trial. He has elected at this point to represent himself, and the Court will find, based on the canvass at this time, that he is, in fact, competent to conduct -- represent himself at this time. Certainly, the Court considers all of the pertinent factors in determining if the defendant has sufficient mental capacity to discharge the essential functions necessary to conduct his own defense, including the defendant's ability to relate to the Court or the jury in a coherent manner. So, under the circumstances at this time, I do think the defendant has a right to represent himself, and I would be prepared to proceed in that fashion, allow him to permit the -- to file -- I would permit him to file the pro se appearance and ask Attorney Williams to participate as standby counsel.

THE DEFENDANT: Your Honor?

THE COURT: Yes.

THE DEFENDANT: Will I be able to get a copy of the complete records from the case?

THE COURT: You mean once your case is over, or are you talking about at this stage?

THE DEFENDANT: At this stage, to look over everything on my own.

THE COURT: Well, certainly, Attorney Williams has the documentation. I know you've had access to that already. You'll continue to have that, so I

don't see any reason why the defendant shouldn't have that.

THE DEFENDANT: You know, because I had researched before, and it said, like, you can go to the clerk and get, like, the file, like a complete copy of the file.

THE COURT: Are you talking about for appeal? Or are you talking about --

THE DEFENDANT: No, just for, like, all of the information that has been shared and brought to the table throughout the whole case.

ATTY. BOWMAN: Your Honor, the State's already made two copies of copious -- I mean, this box behind me is not the entire file for both Attorney O'Donnell and Attorney Williams. There are mountains of records. At this point, on the eve of trial, I think that Attorney Williams has them. It would be a burden on the State at this time to ask us to regenerate those for a third time.

THE COURT: All right, so I'm not going to require the State to make an additional copy of that, but you can have access to what Mr. Williams has.

THE DEFENDANT: All right, I'm totally fine with that.

THE COURT: That's fine. All right, and if it was a transcript that you were requesting of any prior hearings or anything of that nature. That's

just a request that you make, and that gets processed accordingly. All right, so I guess that leads us to being ready to call in our jury panel. And so, you understand, sir, that what that's going to mean is that you'll be representing yourself as we proceed forward in this case. Do you understand that?

THE DEFENDANT: Yes, so --

THE COURT: And that is what you want the Court -- that's what you're asking the Court to do right now?

THE DEFENDANT: Any questioning with -- can be with John's help at this moment?

THE COURT: Certainly, Mr. Williams will be here and be available for you to speak to, if you wish to speak with him. I'll permit you that opportunity.

THE DEFENDANT: Okay.

ATTY. BOWMAN: Your Honor, if I could, I've just not had this situation, a defense attorney act as standby counsel. I guess I'm asking the Court just for clarification on what it -- is Attorney Williams going to be doing questioning? Is the defendant? I'm just -- if I could, just for my own edification.

ATTY. WILLIAMS: My understanding of the role of standby counsel is I'm not allowed to speak. I just sit here, and if he wants to ask me a question, I answer it.

THE COURT: Yes, and that's the Court's

understanding, that Mr. Williams will be here. He will be available throughout. If the defendant wishes to discuss anything with Attorney Williams, I'll give him a reasonable opportunity to do that.

ATTY. BOWMAN: Thank you. I just hadn't, in ten years, hadn't had that situation.

THE COURT: All right.

ATTY. BOWMAN: Thank you.

THE COURT: All right, so was there something else?

THE DEFENDANT: The forms.

THE COURT: Your appearance?

THE DEFENDANT: Yes.

THE COURT: Yes, you may file that.

ATTY. HOLMES: Your Honor, and -- I apologize. Grayson Holmes for the State. I just want to make sure that we're clear on the record that the Court has made the finding that the defendant has knowingly and voluntarily waived his right to counsel.

THE COURT: Yes, I will make that finding at this time.

ATTY. HOLMES: Thank you.

THE COURT: Yes, let me just also indicate for the record that I have found, based on the Court's questioning, that the accused is literate, competent, and understanding of everything that's occurred here, and that the waiver's a knowing and voluntary

exercise of free will at this point. Thank you.

ATTY. BOWMAN: Thank you.

(Jury panel summoned.)

* * *

NO: K10K-CR14-[redacted]-S K10K-MV14-[redacted]-S	:	SUPERIOR COURT
STATE OF CONNECTICUT	:	JUDICIAL DISTRICT OF NEW LONDON
v.	:	AT NEW LONDON, CONNECTICUT
MARCUS H[redacted]	:	FEBRUARY 18, 2016

C E R T I F I C A T I O N

I hereby certify the foregoing pages are a true and correct transcription of the audio recording of the above-referenced case, heard in Superior Court, Judicial District of New London, New London, Connecticut, before the Honorable Barbara Bailey Jongbloed, Judge, on the 18th day of February, 2016.

Dated this 17th day of March, 2016, in New London, Connecticut.

Melanie Pearce
Court Recording Monitor

exercising a peremptory challenge.

Let me just inquire. It is quarter of. Do we have time to finish the last person?

ATTY. WILLIAMS: I doubt it, Your Honor. The most I can give you is another five minutes.

THE COURT: All right. Well, I suppose under the circumstances -- I don't know. Do we think five minutes is enough?

ATTY. BOWMAN: I wouldn't say, Your Honor. We did get such as a late start today and we already got three. I think if we are able to start right at ten tomorrow, we might be able -- I have faith that we'll be able to get through what we need to.

THE COURT: All right. All right then. We'll excuse this gentlemen.

(Venireperson summoned.)

THE COURT: All right. So, sir, you have not been selected to serve as a juror in this particular case, but we do appreciate your being here today, and you'll be notified again in the future for jury service.

VENIREPERSON ROGERS: Okay. Thank you. You folks have a good weekend.

THE COURT: Thank you very much. Thank you.

(Venireperson excused.)

THE COURT: All right. So what we'll do is we'll indicate to our last individual that we're

unable to get to him today, and we'll plan to resume then right at ten o'clock tomorrow morning.

THE DEFENDANT: I just wanted to notify you -- it has nothing to do with the selection or anything.

THE COURT: All right.

THE DEFENDANT: During recess, I went to speak to the Public Defender's Office, and they wouldn't give me an application. They didn't even say I'd get denied or -- they just wouldn't give me anything.

THE COURT: Well, was that in this business?

THE DEFENDANT: Yeah. Downstairs.

THE COURT: All right. It may be that this is a case out of GA-10. So the Public Defender's Offices are separate and distinct, so it may be that if you're looking for something like that, you would need to go to the Public Defender's Office at GA-10 which is the other courthouse.

THE DEFENDANT: Okay.

THE COURT: They should be there until -- there should be someone there. I don't know. Maybe Ms. Bowman knows. But I would imagine there might be someone there now.

THE DEFENDANT: All right. Thank you. I just wanted to bring it --

THE COURT: All right. That's fine. Anything else then before we adjourn for the day?

NO: K10K-CR14-[redacted]-S
K10K-MV14-[redacted]-S : SUPERIOR COURT

STATE OF CONNECTICUT : JUDICIAL DISTRICT
OF NEW LONDON

v. : AT NEW LONDON, CONNECTICUT

MARCUS H[redacted] : FEBRUARY 19, 2016

HEARING -- EXCERPT

BEFORE THE HONORABLE BARBARA BAILEY JONGBLOED, JUDGE

A P P E A R A N C E S :

REPRESENTING THE STATE OF CONNECTICUT:

ATTORNEY SARAH BOWMAN
ATTORNEY GRAYSON HOLMES
State's Attorney's Office
112 Broad Street
New London, Connecticut 06320

REPRESENTING THE DEFENDANT:

MARCUS H[redacted], SELF-REPRESENTED PARTY

ALSO PRESENT:

ATTORNEY JOHN R. WILLIAMS, STANDBY COUNSEL

ATTORNEY SEAN F. KELLY

Ordering Party: Lauren Weisfeld,
Attorney for Defendant on appeal

THE COURT: Good morning, everyone. This is the matter of the State of Connecticut versus Marcus H[redacted]. Could we have the appearances for the record, please.

ATTY. BOWMAN: Good morning, Your Honor. Assistant State's Attorney Sarah Bowman.

ATTY. HOLMES: Special Deputy Assistant State's Attorney Grayson Holmes.

THE DEFENDANT: Marcus H[redacted] for the defendant.

ATTY. WILLIAMS: John Williams, standby.

THE COURT: Thank you.

ATTY. KELLY: And Sean Kelly, Judge, from the Office of the Public Defender.

THE COURT: All right, and do I understand that Mr. H[redacted] applied for the Public Defender's appointment?

ATTY. KELLY: That is correct, Judge. He came back -- once again, Sean Kelly for the record, Judge. He came up late yesterday afternoon in order to make application. I advised him. We spoke, I think probably for about 40 minutes or so, sent him home, said be at my office at nine o'clock in the morning in order to prepare an application so we could look at his eligibility for Public Defender services. He did. He brought down some information for me.

We did take the application today, and I think I have to say, and I've explained to Mr. H[redacted] as

well, I am not seeking appointment in this matter at this point, and not so much related to his financial status as it currently sits, Judge, although I don't have a full view of it, because I'd still need his -- he gave me a general idea of what his mother does make, and I know she is working right now, I guess for the Board of Ed in either North Haven or New Haven. I don't have her total amount of income, but we would go by a household income, and he is residing there.

The issue is, and if I can clarify for the record, and maybe I could do that with Madam Clerk, I believe, Madam Clerk, at least two times previously, including Mr. Williams as one, but there was also private counsel retained in this matter?

THE CLERK: That's my understanding.

ATTY. KELLY: And putting all that on the record, Judge, and putting the fact that he has actually posted bonds - I recognize that it was back in I think 2014, June of 2014 - but in 2014, posted significant bonds in order to end up getting his liberty, in essence, while the cases are pending.

In addition, he was able to enter into two arrangements with two private counsels. Kind of shows a pattern where, if there's money needed, money comes, and that's where we are right now. I know he does have a right to represent himself pro se. I

know he does have esteemed counsel appointed as standby right now with Mr. Williams. So, in a vacuum, just looking at the application alone, that's not enough to end up -- the basis for my decision not to seek appointment, Judge. I would ask the Court to take all circumstances into consideration.

THE COURT: All right, anything you wish to say, sir?

THE DEFENDANT: Yes, Your Honor. I had a conversation on two occasions with Mr. Kelly, and he was very honest. However, what -- in terms of the bonds, those bonds were posted over a year and a half ago. Since then, my financial state has changed very, very drastically. The two private counsels that I did hire, I provided Mr. Kelly with one of the financial agreements with the original lawyer, and I owed him $4,800, I think it was. $4,400.

ATTY. KELLY: I'll get it for you, so it makes it easy. Here you go. I think the balance due was still $4,390.

THE DEFENDANT: $4,390, and that's out of $5,000. I was only able to pay him $610 before we parted ways, and it wasn't -- that was very early in this case that he was dismissed, and he actually, on-record, admitted what he did wrong in that situation. And yesterday, we addressed, you know, the issue with Attorney Williams. I also, and he can attest to it,

owe him a substantial amount of money. The initial payment that was given to Attorney Williams was not from myself. It was from my mom's entire income tax return. I don't have that paperwork with me right now, but I could, if need be, provide you with it.

Yesterday, I explained to you how concerned I was going forward with Mr. Williams, with all due respect, as my counsel. You know, you said you understood where I was coming from and everything, and that if I had someone else at that moment to file an appearance, then you would, you know, accept. I didn't. Therefore, I took the initiative to go and apply for Public Defender's help as counsel, because I did state on numerous times yesterday that I did not want the legal assistance from Mr. Williams, because I felt it would be ineffective, and the Sixth Amendment gives us the right to effective counsel.

And in my financial state, it also gives us the right to free counsel on the State's -- I guess we could say on the State's dollar or per the State's payment. And I would ask that you would consider the appointment from the Public Defender's Office, because I am, indeed, financially eligible for the services.

THE COURT: Ms. Bowman?

ATTY. BOWMAN: Thank you, Your Honor. I'm just struck again by -- as was, I believe, speaking

frankly with yesterday's requests, that this is just another delay tactic on the part of the defendant. He states he took the initiative to go to the Public Defender's Office. However, he could have done that at any time through the past almost two years.

He also stated if need be, I could provide financial information. He -- if need be? He was asked yesterday to bring financial information about his mother's resources and salary, and he didn't. If need be, it doesn't get us anywhere. Today was the day to bring that information to the Public Defender's Office to look at it, and he chose not to, thus, I believe, in essence, requesting another delay in this case. I ask that it be -- his request of the appointment be denied.

THE DEFENDANT: In regards to the comment about being asked for my mom's financial state or paperwork to prove that, that was never asked.

ATTY. KELLY: And I will say, Judge, he's correct in reference to that. I did not ask for his mother's income at that point. I just asked for a financial global picture. Certainly, that was not specifically specified. I do agree.

THE DEFENDANT: And again, I explained yesterday that I was seeking further counsel because of the -- my belief that the assistance from Mr. Williams would be ineffective. It's not a stall tactic. It's

simply because I am seeking justice in the situation. I mean, the State does have, you know, their obligation to uphold their opinion and, you know, bring it forth to you. I'm just coming to you honestly. I spoke to you yesterday about the fact that I was looking into other attorneys. I didn't have them present with me yesterday, but I do have the -- at least, a representative from the Public Defender's Office with me today. I can understand what his concerns may be with the past attorneys, but the first attorney dismissed himself. He agreed with what happened.

THE COURT: All right. Ms. Bowman?

ATTY. BOWMAN: I just have to go back to that. There was no grievance ever. We looked into Attorney O'Donnell's grievance. There were no grievances with this defendant towards Attorney O'Donnell. I'm not sure what that's about. I just wanted to put that on the record. We did investigate that yesterday, and --

THE COURT: Attorney O'Donnell was the first attorney --

ATTY. BOWMAN: Very first.

THE COURT: -- retained by the defendant?

ATTY. BOWMAN: Correct.

THE DEFENDANT: Your Honor, in regards to the grievance, there is one on file, and if -- I can have

my mom fax it to your secretary today, if need be. There is most definitely a grievance on file. My mom has the paperwork at hand at any point --

THE COURT: Well --

THE DEFENDANT: -- that may be needed.

THE COURT: Well, what is the relevance of whether or not there was a grievance filed against Attorney O'Donnell to this proceeding?

THE DEFENDANT: I mean, she brought it up. That's all.

THE COURT: I'm not sure --

ATTY. BOWMAN: Well, it was brought up twice that there was some admission of malfeasance, and I just want to say we researched and there was no finding or anything of that sort. Your Honor, I would just also like to point out for the record, at this point, yesterday, we proceeded from approximately noon on with jury selection 'til quarter to four. The defendant did a very competent job. He has had the experience of watching the entire voir dire process and a jury picked in this case previously that wasn't paneled. In addition, he has, obviously, very skilled standby counsel and did a very competent job yesterday in the jury selection process. I think that, again, for all of those reasons, I think that we should proceed as we did yesterday.

THE COURT: Sir?

THE DEFENDANT: Yeah, one last thing, sorry. The question at hand is not my competence. The question at hand is not how great of an attorney the esteemed John Williams is. The question is his effectiveness in this particular case. I'm not saying that John doesn't deserve awards every year from the Bar Association. I'm talking about the effectiveness in this particular case. The conversations we've had, John and myself, off-record, I'm not -- I mean, yeah, I may have done a good job yesterday in the jury selection process. However, I'm seeking another attorney. I'm seeking help from someone else. You -- I mean, the Court appointed Mr. Williams as standby attorney. It wasn't me who, you know, put in a request for him to be standby attorney, so I would just like to have that on the record.

THE COURT: All right, thank you.

All right, and I would also note that it was certainly apparent, and I made the observation yesterday as well, that the defendant was utilizing the services of Mr. Williams as standby throughout the process yesterday. But let me just indicate that the Public Defender's Office has made the determination that the defendant is not eligible. They are not seeking to be appointed in this case.

Did you have -- want to add something else?

THE DEFENDANT: You said I wasn't eligible?

ATTY. KELLY: What I said was I was not gonna seek appointment, given all circumstances. I said just on what the financial affidavit that you provided alone, if taken in a vacuum, perhaps that might indicate that you are eligible. I'll state that for the record.

However, what I will say, this is not a situation in which your application is viewed inside a vacuum. This is a scenario in which we're looking at all factors, and I don't have all of them right now, because this was brought on at the last minute, obviously. I'm not faulting you for that. But we're left with a scenario where you are arriving or living at home. I don't have the entire household income. I know you have brought some information related to tax -- your tax documents in the past. At one point, you clearly would not have been eligible, around 2014, 2015. You were able to post bonds, arrive at financial matters or agreements with bondsmen, and you were able to actually retain the services of two private lawyers. That's usually not the circumstance or recipe where appointment is sought, Judge.

THE DEFENDANT: And again, one last thing. I proved -- I gave records to Attorney Kelly, and I explained to him that I owe money on those bonds as

well. I have balances on those bonds, which we spoke about, so I don't think -- like he said, it's not that I'm not eligible. He's just not seeking appointment. I -- like he said, my financial state at this point. I have no money at all, and -- but would you agree that, financially, I am eligible for the services?

ATTY. KELLY: I'd say -- the financial affidavit that you provided to me I said looks like, alone, not -- if it was in a vacuum, you would qualify, but it is not. I think, given the global circumstances and everything that comes into this case, no, we're not seeking appointment, given those circumstances.

THE COURT: All right, so, under all the circumstances, they're not seeking to be appointed. I am not going to appoint the Public Defender's Office to represent you. We'll continue your appearance pro se with standby counsel by Attorney Williams, all right? So, thank you, Mr. Kelly.

ATTY. KELLY: You're welcome.

THE COURT: And you may be excused.

* * *

NO: K10K-CR14-[redacted]-S K10K-MV14-[redacted]-S	:	SUPERIOR COURT
STATE OF CONNECTICUT	:	JUDICIAL DISTRICT OF NEW LONDON
v.	:	AT NEW LONDON, CONNECTICUT
MARCUS H[redacted]	:	FEBRUARY 19, 2016

C E R T I F I C A T I O N

I hereby certify the foregoing pages are a true and correct transcription of the audio recording of the above-referenced case, heard in Superior Court, Judicial District of New London, New London, Connecticut, before the Honorable Barbara Bailey Jongbloed, Judge, on the 19th day of February, 2016.

Dated this 26th day of February, 2016, in New London, Connecticut.

Melanie Pearce
Court Recording Monitor

Connecticut Statutes

Title 14. MOTOR VEHICLES. USE OF THE HIGHWAY BY VEHICLES. GASOLINE

Chapter 248. VEHICLE HIGHWAY USE

Current through the 2019 Regular Legislative Session

§ 14-222. Reckless driving

(a) No person shall operate any motor vehicle upon any public highway of the state, or any road of any specially chartered municipal association or of any district organized under the provisions of chapter 105, a purpose of which is the construction and maintenance of roads and sidewalks, or in any parking area for ten cars or more or upon any private road on which a speed limit has been established in accordance with the provisions of section 14-218a or upon any school property recklessly, having regard to the width, traffic and use of such highway, road, school property or parking area, the intersection of streets and the weather conditions. The operation of a motor vehicle upon any such highway, road or parking area for ten cars or more at such a rate of speed as to endanger the life of any person other than the operator of such motor vehicle, or the operation, downgrade, upon any highway, of any motor vehicle with a commercial registration with the clutch or gears disengaged, or the operation knowingly of a motor vehicle with defective mechanism, shall constitute a violation of the provisions of this section. The operation of a motor vehicle upon any such highway, road or parking area for ten cars or more at a rate of speed greater than eighty-five miles per hour shall constitute a violation of the provisions of this section.

(b) Any person who violates any provision of this section shall be fined not less than one hundred dollars nor more than three hundred dollars or imprisoned not more than thirty days or be both fined and imprisoned for the first offense and for each subsequent offense shall be fined not more than six hundred dollars or imprisoned not more than one year or be both fined and imprisoned.

Connecticut Statutes

Title 14. MOTOR VEHICLES. USE OF THE HIGHWAY BY VEHICLES. GASOLINE

Chapter 248. VEHICLE HIGHWAY USE

Current through the 2019 Regular Legislative Session

§ 14-223. Failing to stop when signaled or disobeying direction of officer. Increasing speed in attempt to escape or elude officer

(a) Whenever the operator of any motor vehicle fails promptly to bring his motor vehicle to a full stop upon the signal of any officer in uniform or prominently displaying the badge of his office, or disobeys the direction of such officer with relation to the operation of his motor vehicle, he shall be deemed to have committed an infraction and be fined fifty dollars.

(b) No person operating a motor vehicle, when signaled to stop by an officer in a police vehicle using an audible signal device or flashing or revolving lights, shall increase the speed of the motor vehicle in an attempt to escape or elude such police officer. Any person who violates this subsection shall be guilty of a class A misdemeanor, except that, if such violation causes the death or serious physical injury, as defined in section 53a-3, of another person, such person shall be guilty of a class C felony, and shall have such person's motor vehicle operator's license suspended for one year for the first offense, except that the Commissioner of Motor Vehicles may, after a hearing, as provided for in subsection (i) of section 14111, and upon a showing of compelling mitigating circumstances, reinstate such person's license before the expiration of such oneyear period. For any subsequent offense such person shall be guilty of a class C felony, except that if any prior offense by such person under this subsection caused, and such subsequent offense causes, the death or serious physical injury, as defined in section 53a-3, of another person, such person shall be guilty of a class C felony for which one year of the sentence imposed may not be suspended or reduced by the court, and shall have such person's motor vehicle operator's license suspended for not less than eighteen months nor more than two years, except that said commissioner may, after a hearing, as provided for in subsection (i) of section 14111, and upon a showing of compelling mitigating circumstances, reinstate such person's license before such period.

Connecticut Statutes
Title 14. MOTOR VEHICLES. USE OF THE HIGHWAY BY VEHICLES. GASOLINE
Chapter 248. VEHICLE HIGHWAY USE

Current through the 2019 Regular Legislative Session

§ 14-227a. Operation while under the influence of liquor or drug or while having an elevated blood alcohol content

(a) **Operation while under the influence or while having an elevated blood alcohol content.** No person shall operate a motor vehicle while under the influence of intoxicating liquor or any drug or both. A person commits the offense of operating a motor vehicle while under the influence of intoxicating liquor or any drug or both if such person operates a motor vehicle (1) while under the influence of intoxicating liquor or any drug or both, or (2) while such person has an elevated blood alcohol content. For the purposes of this section, "elevated blood alcohol content" means a ratio of alcohol in the blood of such person that is eight-hundredths of one per cent or more of alcohol, by weight, except that if such person is operating a commercial motor vehicle, "elevated blood alcohol content" means a ratio of alcohol in the blood of such person that is four-hundredths of one per cent or more of alcohol, by weight, and "motor vehicle" includes a snowmobile and all-terrain vehicle, as those terms are defined in section 14-379.

(b) **Admissibility of chemical analysis.** Except as provided in subsection (c) of this section, in any criminal prosecution for violation of subsection (a) of this section, evidence respecting the amount of alcohol or drug in the defendant's blood or urine at the time of the alleged offense, as shown by a chemical analysis of the defendant's breath, blood or urine shall be admissible and competent provided:

(1) The defendant was afforded a reasonable opportunity to telephone an attorney prior to the performance of the test and consented to the taking of the test upon which such analysis is made;

(2) a true copy of the report of the test result was mailed to or personally delivered to the defendant within twenty-four hours or by the end of the next regular business day, after such result was known, whichever is later;

(3) the test was performed by or at the direction of a police officer according to methods and with equipment approved by the Department of Emergency Services and Public Protection and was performed in accordance with the regulations adopted under subsection (d) of this section;

(4) the device used for such test was checked for accuracy in accordance with the regulations adopted under subsection (d) of this section;

(5) an additional chemical test of the same type was performed at least ten minutes after the initial test was performed or, if requested by the police officer for reasonable cause, an additional chemical test of a different type was performed to detect the presence of a drug or drugs other than or in addition to alcohol, provided the results of the initial test shall not be inadmissible under this subsection if reasonable efforts were made to have such additional test performed in accordance with the conditions set forth in this subsection and such additional test was not performed or was not performed within a reasonable time, or the results of such additional test are not admissible for failure to meet a condition set forth in this subsection; and

(6) evidence is presented that the test was commenced within two hours of operation. In any prosecution under this section it shall be a rebuttable presumption that the results of such chemical analysis establish the ratio of alcohol in the blood of the defendant at the time of the alleged offense, except that if the results of the additional test indicate that the ratio of alcohol in the blood of such defendant is ten-hundredths of one per cent or less of alcohol, by weight, and is higher than the results of the first test, evidence shall be presented that demonstrates that the test results and the analysis thereof accurately indicate the blood alcohol content at the time of the alleged offense.

(c) **Evidence of blood alcohol content.** In any prosecution for a violation of subdivision (1) of subsection (a) of this section, reliable evidence respecting the amount of alcohol in the defendant's blood or urine at the time of the

alleged offense, as shown by a chemical analysis of the defendant's blood, breath or urine, otherwise admissible under subsection (b) of this section, shall be admissible only at the request of the defendant.

(d) **Testing and analysis of blood, breath and urine.** The Commissioner of Emergency Services and Public Protection shall ascertain the reliability of each method and type of device offered for chemical testing and analysis purposes of blood, of breath and of urine and certify those methods and types which said commissioner finds suitable for use in testing and analysis of blood, breath and urine, respectively, in this state. The Commissioner of Emergency Services and Public Protection shall adopt regulations, in accordance with chapter 54, governing the conduct of chemical tests, the operation and use of chemical test devices, the training and certification of operators of such devices and the drawing or obtaining of blood, breath or urine samples as said commissioner finds necessary to protect the health and safety of persons who submit to chemical tests and to insure reasonable accuracy in testing results. Such regulations shall not require recertification of a police officer solely because such officer terminates such officer's employment with the law enforcement agency for which certification was originally issued and commences employment with another such agency.

(e) **Evidence of refusal to submit to test.** In any criminal prosecution for a violation of subsection (a) of this section, evidence that the defendant refused to submit to a blood, breath or urine test requested in accordance with section 14-227b shall be admissible provided the requirements of subsection (b) of said section have been satisfied. If a case involving a violation of subsection (a) of this section is tried to a jury, the court shall instruct the jury as to any inference that may or may not be drawn from the defendant's refusal to submit to a blood, breath or urine test.

(f) **Reduction, nolle or dismissal prohibited.** If a person is charged with a violation of the provisions of subsection (a) of this section, the charge may not be reduced, nolled or dismissed unless the prosecuting authority states in open court such prosecutor's reasons for the reduction, nolle or dismissal.

(g) **Penalties for operation while under the influence.** Any person who violates any provision of subsection (a) of this section shall:

(1) For conviction of a first violation, (A) be fined not less than five hundred dollars or more than one thousand dollars, and (B) be (i) imprisoned not more than six months, forty-eight consecutive hours of which may not be suspended or reduced in any manner, or (ii) imprisoned not more than six months, with the execution of such sentence of imprisonment suspended entirely and a period of probation imposed requiring as a condition of such probation that such person perform one hundred hours of community service, as defined in section 14-227e, and (C) have such person's motor vehicle operator's license or nonresident operating privilege suspended for forty-five days and, as a condition for the restoration of such license, be required to install an ignition interlock device on each motor vehicle owned or operated by such person and, upon such restoration, be prohibited for the one-year period following such restoration from operating a motor vehicle unless such motor vehicle is equipped with a functioning, approved ignition interlock device, as defined in section 14-227j ;

(2) for conviction of a second violation within ten years after a prior conviction for the same offense, (A) be fined not less than one thousand dollars or more than four thousand dollars, (B) be imprisoned not more than two years, one hundred twenty consecutive days of which may not be suspended or reduced in any manner, and sentenced to a period of probation requiring as a condition of such probation that such person:

(i) Perform one hundred hours of community service, as defined in section 14-227e,

(ii) submit to an assessment through the Court Support Services Division of the Judicial Branch of the degree of such person's alcohol or drug abuse, and

(iii) undergo a treatment program if so ordered, and (C) have such person's motor vehicle operator's license or nonresident operating privilege suspended for forty-five days and, as a condition for the restoration of such license, be required to install an ignition interlock device on each motor vehicle owned or operated by such person and, upon such restoration, be prohibited for the three-year period following such restoration from operating a motor vehicle unless such motor vehicle is equipped with a functioning, approved ignition interlock device, as defined in section 14-227j, except that for the first year of such three-year period, such person's operation of a motor vehicle shall be limited to such person's transportation to or from work or school, an alcohol or drug abuse treatment program, an ignition interlock device service center or an appointment with a probation officer; and

(3) for conviction of a third and subsequent violation within ten years after a prior conviction for the same offense, (A) be fined not less than two thousand dollars or more than eight thousand dollars, (B) be imprisoned not more than three years, one year of which may not be suspended or reduced in any manner, and sentenced to a period of probation requiring as a condition of such probation that such person:

(i) Perform one hundred hours of community service, as defined in section 14-227e,

(ii)

submit to an assessment through the Court Support Services Division of the Judicial Branch of the degree of such person's alcohol or drug abuse, and

(iii) undergo a treatment program if so ordered, and (C) have such person's motor vehicle operator's license or nonresident operating privilege permanently revoked upon such third offense, except that if such person's revocation is reversed or reduced pursuant to subsection (i) of section 14-111, such person shall be prohibited from operating a motor vehicle unless such motor vehicle is equipped with a functioning, approved ignition interlock device, as defined in section 14-227j, for the time period prescribed in subdivision (2) of subsection (i) of section 14-111. For purposes of the imposition of penalties for a second or third and subsequent offense pursuant to this subsection, a conviction under the provisions of subsection (a) of this section in effect on October 1, 1981, or as amended thereafter, a conviction under the provisions of either subdivision (1) or (2) of subsection (a) of this section, a conviction under the provisions of section 14-227m, a conviction under the provisions of subdivision (1) or (2) of subsection (a) of section 14-227n, a conviction under the provisions of section 53a-56b or 53a-60d or a conviction in any other state of any offense the essential elements of which are determined by the court to be substantially the same as subdivision (1) or (2) of subsection (a) of this section, section 14-227m, subdivision (1) or (2) of subsection (a) of section 14-227n or section 53a-56b or 53a-60d, shall constitute a prior conviction for the same offense.

(h) Suspension of operator's license or nonresident operating privilege.

(1) Each court shall report each conviction under subsection (a) of this section to the Commissioner of Motor Vehicles, in accordance with the provisions of section 14-141. The commissioner shall suspend the motor vehicle operator's license or nonresident operating privilege of the person reported as convicted for the period of time required by subsection (g) of this section. The commissioner shall determine the period of time required by subsection (g) of this section based on the number of convictions such person has had within the specified time period according to such person's driving history record, notwithstanding the sentence imposed by the court for such conviction.

(2) The motor vehicle operator's license or nonresident operating privilege of a person found guilty under subsection (a) of this section who, at the time of the offense, was operating a motor vehicle in accordance with a special operator's permit issued pursuant to section 14-37a shall be suspended by the commissioner for twice the period of time set forth in subsection (g) of this section.

(3) If an appeal of any conviction under subsection (a) of this section is taken, the suspension of the motor vehicle operator's license or nonresident operating privilege by the commissioner, in accordance with this subsection, shall be stayed during the pendency of such appeal.

(i) Ignition interlock device.

(1) The Commissioner of Motor Vehicles shall permit a person whose license has been suspended in accordance with the provisions of subparagraph (C) of subdivision (1) or subparagraph (C) of subdivision (2) of subsection (g) of this section to operate a motor vehicle if (A) such person has served either the suspension required under said subparagraph (C) or the suspension required under subsection (i) of section 14-227b, and (B) such person has installed an approved ignition interlock device in each motor vehicle owned or to be operated by such person, and verifies to the commissioner, in such manner as the commissioner prescribes, that such device has been installed. For a period of one year after the installation of an ignition interlock device by a person who is subject to subparagraph (C) of subdivision (2) of subsection (g) of this section, such person's operation of a motor vehicle shall be limited to such person's transportation to or from work or school, an alcohol or drug abuse treatment program, an ignition interlock device service center or an appointment with a probation officer. Except as provided in sections 53a-56b and 53a-60d, no person whose license is suspended by the commissioner for any other reason shall be eligible to operate a motor vehicle equipped with an approved ignition interlock device.

(2) All costs of installing and maintaining an ignition interlock device shall be borne by the person required to install such device. No court sentencing a person convicted of a violation of subsection (a) of this section may waive any fees or costs associated with the installation and maintenance of an ignition interlock device.

(3) The commissioner shall adopt regulations, in accordance with the provisions of chapter 54, to implement the provisions of this subsection. The regulations shall establish procedures for the approval of ignition interlock devices, for the proper calibration and maintenance of such devices and for the installation of such devices by any firm approved and authorized by the commissioner and shall specify acts by persons required to install and use such devices that constitute a failure to comply with the requirements for the installation and use of such devices, the conditions under which such noncompliance will result in an extension of the period during which such persons are restricted to the operation of motor vehicles equipped with such devices and the duration of any such extension. The commissioner shall ensure that such firm provide notice to both the commissioner and the Court Support Services Division of the Judicial Branch whenever a person required to install such device commits a violation with respect to the installation, maintenance or use of such device.

(4) The provisions of this subsection shall not be construed to authorize the continued operation of a motor vehicle equipped with an ignition interlock device by any person whose operator's license or nonresident operating privilege is withdrawn, suspended or revoked for any other reason.

(5) The provisions of this subsection shall apply to any person whose license has been suspended in accordance with the provisions of subparagraph (C) of subdivision (1) or subparagraph (C) of subdivision (2) of subsection (g) of this section on or after January 1, 2012.

(6) Whenever a person is permitted by the commissioner under this subsection to operate a motor vehicle if such person has installed an approved ignition interlock device in each motor vehicle owned or to be operated by such person, the commissioner shall indicate in the electronic record maintained by the commissioner pertaining to such person's operator's license or driving history that such person is restricted to operating a motor vehicle that is equipped with an ignition interlock device and, if applicable, that such person's operation of a motor vehicle is limited to such person's transportation to or from work or school, an alcohol or drug abuse treatment program, an ignition interlock device service center or an appointment with a probation officer, and the duration of such restriction or limitation, and shall ensure that such electronic record is accessible by law enforcement officers. Any such person shall pay the commissioner a fee of one hundred dollars prior to the installation of such device.

(7) There is established the ignition interlock administration account which shall be a separate, nonlapsing account in the General Fund. The commissioner shall deposit all fees paid pursuant to subdivision (6) of this subsection in the account. Funds in the account may be used by the commissioner for the administration of this subsection.

(8) Notwithstanding any provision of the general statutes to the contrary, upon request of any person convicted of a violation of subsection (a) of this section whose operator's license is under suspension on January 1, 2012, the Commissioner of Motor Vehicles may reduce the term of suspension prescribed in subsection (g) of this section and place a restriction on the operator's license of such person that restricts the holder of such license to the operation of a motor vehicle that is equipped with an approved ignition interlock device, as defined in section 14-227j, for the remainder of such prescribed period of suspension.

(9) Any person required to install an ignition interlock device under this section shall be supervised by personnel of the Court Support Services Division of the Judicial Branch while such person is subject to probation supervision, or by personnel of the Department of Motor Vehicles if such person is not subject to probation supervision, and such person shall be subject to any other terms and conditions as the commissioner may prescribe and any provision of the general statutes or the regulations adopted pursuant to subdivision (3) of this subsection not inconsistent herewith.

(10) Notwithstanding the periods prescribed in subsection (g) of this section and subdivision (2) of subsection (i) of section 14-111 during which a person is prohibited from operating a motor vehicle unless such motor vehicle is equipped with a functioning, approved ignition interlock device, such periods may be extended in accordance with the regulations adopted pursuant to subdivision (3) of this subsection.

(j) **Participation in alcohol education and treatment program.** In addition to any fine or sentence imposed pursuant to the provisions of subsection (g) of this section, the court may order such person to participate in an alcohol education and treatment program.

(k) **Seizure and admissibility of medical records of injured operator.** Notwithstanding the provisions of subsection (b) of this section, evidence respecting the amount of alcohol or drug in the blood or urine of an operator of a motor vehicle involved in an accident who has suffered or allegedly suffered physical injury in such accident, which evidence is derived from a chemical analysis of a blood sample taken from or a urine sample provided by such person after such accident at the scene of the accident, while en route to a hospital or at a hospital, shall be competent evidence to establish probable cause for the arrest by warrant of such person for a violation of subsection (a) of this section and shall be admissible and competent in any subsequent prosecution thereof if:

(1) The blood sample was taken or the urine sample was provided for the diagnosis and treatment of such injury;

(2) if a blood sample was taken, the blood sample was taken in accordance with the regulations adopted under subsection (d) of this section;

(3) a police officer has demonstrated to the satisfaction of a judge of the Superior Court that such officer has reason to believe that such person was operating a motor vehicle while under the influence of intoxicating liquor or drug or both and that the chemical analysis of such blood or urine sample constitutes evidence of the commission of the offense of operating a motor vehicle while under the influence of intoxicating liquor or drug or both in violation of subsection (a) of this section; and

(4) such judge has issued a search warrant in accordance with section 54-33a authorizing the seizure of the chemical analysis of such blood or urine sample. Such search warrant may also authorize the seizure of the medical records prepared by the hospital in connection with the diagnosis or treatment of such injury.

(l) **Participation in victim impact panel program.** If the court sentences a person convicted of a violation of subsection (a) of this section to a period of probation, the court may require as a condition of such probation that such person participate in a victim impact panel program approved by the Court Support Services Division of the Judicial Branch. Such victim impact panel program shall provide a nonconfrontational forum for the victims of alcohol-related or drug-related offenses and offenders to share experiences on the impact of alcohol-related or drug-related incidents in their lives. Such victim impact panel program shall be conducted by a nonprofit organization that advocates on behalf of victims of accidents caused by persons who operated a motor vehicle while under the influence of intoxicating liquor or any drug, or both. Such organization may assess a participation fee of not more than seventy-five dollars on any person required by the court to participate in such program.

Connecticut Statutes
Title 51. COURTS
Chapter 887. PUBLIC DEFENDER SERVICES

Current through the 2019 Regular Legislative Session

§ 51-296. Designation of public defender for indigent defendant, codefendant. Legal services and guardians ad litem in family relations matters and juvenile matters. Contracts for legal services

(a) In any criminal action, in any habeas corpus proceeding arising from a criminal matter, in any extradition proceeding, or in any delinquency matter, the court before which the matter is pending shall, if it determines after investigation by the public defender or his office that a defendant is indigent as defined under this chapter, designate a public defender, assistant public defender or deputy assistant public defender to represent such indigent defendant, unless, in a misdemeanor case, at the time of the application for appointment of counsel, the court decides to dispose of the pending charge without subjecting the defendant to a sentence involving immediate incarceration or a suspended sentence of incarceration with a period of probation or the court believes that the disposition of the pending case at a later date will not result in a sentence involving immediate incarceration or a suspended sentence of incarceration with a period of probation and makes a statement to that effect on the record. If it appears to the court at a later date that, if convicted, the sentence of an indigent defendant for whom counsel has not been appointed will involve immediate incarceration or a suspended sentence of incarceration with a period of probation, counsel shall be appointed prior to trial or the entry of a plea of guilty or nolo contendere.

(b) In the case of codefendants, the court may appoint one or more public defenders, assistant public defenders or deputy assistant public defenders to represent such defendants or may appoint counsel from the trial list established under section 51-291.

(c) (1) The division shall provide, pursuant to section 51-296a :

(A) Legal services and guardians ad litem to children, youths and indigent respondents in family relations matters in which the state has been ordered to pay the cost of such legal services and guardians ad litem, provided legal services shall be provided to indigent respondents pursuant to this subparagraph only in paternity proceedings and contempt proceedings; and

(B) legal services and guardians ad litem to children, youths and indigent legal parties in proceedings before the superior court for juvenile matters. To carry out the requirements of this subsection, the office of Chief Public Defender may contract with (i) appropriate not-for-profit legal services agencies, (ii) individual lawyers or law firms for the delivery of legal services to represent children and indigent legal parties in such proceedings, and (iii) mental health professionals as guardians ad litem in family relations matters. Any contract entered into pursuant to this subsection may include terms encouraging or requiring the use of a multidisciplinary agency model of legal representation.

(2) The division shall establish a system to ensure that attorneys providing legal services pursuant to this subsection are assigned to cases in a manner that will avoid conflicts of interest, as defined by the Rules of Professional Conduct.

(3) The division shall establish training, practice and caseload standards for the representation of children, youths, indigent respondents and indigent legal parties pursuant to subdivision (1) of this subsection. Such standards shall apply to each attorney who represents children, youths, indigent respondents or indigent legal parties pursuant to this subsection and shall be designed to ensure a high quality of legal representation. The training standards for attorneys required by this subdivision shall be designed to ensure proficiency in the procedural and substantive law related to such matters and to establish a minimum level of proficiency in relevant subject areas, including, but not limited to, family violence, child development, behavioral health, educational disabilities and cultural competence.

(d) Prior to the appearance in court in any matter specified in this section by a defendant, child, youth, respondent or legal party, a public defender, assistant public defender, deputy assistant public defender or Division of Public Defender Services assigned counsel, upon a determination that the defendant, child, youth, respondent or legal party is indigent pursuant to subsection (a) of section 51-297, shall be authorized to represent the defendant, child, youth, respondent or legal party until the court appoints counsel for such defendant, child, youth, respondent or legal party.

Connecticut Statutes
Title 51. COURTS
Chapter 887. PUBLIC DEFENDER SERVICES

Current through the 2019 Regular Legislative Session

§ 51-297. Determination of indigency; definition, investigation, reimbursement for services, appeal. Penalty for false statement

(a) A public defender, assistant public defender or deputy assistant public defender shall make such investigation of the financial status of each person he has been appointed to represent or who has requested representation based on indigency, as he deems necessary. He shall cause the person to complete a written statement under oath or affirmation setting forth his liabilities and assets, income and sources thereof, and such other information which the commission shall designate and require on forms furnished for such purpose.

(b) Any person who intentionally falsifies a written statement in order to obtain appointment of a public defender, assistant public defender or deputy assistant public defender shall be guilty of a class A misdemeanor.

(c) If a public defender, assistant public defender or deputy assistant public defender is appointed to provide assistance to any person and he subsequently determines that the person is ineligible for assistance, the public defender, assistant public defender or deputy assistant public defender shall promptly inform the person in writing and make a motion to withdraw his appearance if filed, or his appointment if made by the court, as soon as it is practical to do so without prejudice to the case, giving the defendant a reasonable time to secure private counsel. If the withdrawal is granted by the court, the person shall reimburse the commission for any assistance which has been provided for which the person is ineligible.

(d) Reimbursement to the commission shall be made in accordance with a schedule of reasonable charges for public defender services which shall be provided by the commission.

(e) The Chief Public Defender or anyone serving under him may institute an investigation into the financial status of each defendant at such times as the circumstances shall warrant. In connection therewith, he shall have the authority to require a defendant or the parents, guardians or other persons responsible for the support of a minor defendant, child or youth, or those persons holding property in trust or otherwise for a defendant, child or youth, to execute and deliver such written authorizations as may be necessary to provide the Chief Public Defender, or anyone serving under him, with access to records of public or private sources, otherwise confidential, or any other information, which may be relevant to the making of a decision as to eligibility under this chapter. The Chief Public Defender, the Deputy Chief Public Defender, and each public defender, assistant public defender and deputy assistant public defender or designee, are authorized to obtain information from any office of the state or any subdivision or agency thereof on request and without payment of any fees.

(f) As used in this chapter, "indigent defendant" means

(1) a person who is formally charged with the commission of a crime punishable by imprisonment and who does not have the financial ability at the time of his request for representation to secure competent legal representation and to provide other necessary expenses of legal representation;

(2) a child who has a right to counsel under the provisions of subsection (a) of section 46b-135 and who does not have the financial ability at the time of his request for representation to secure competent legal representation and to provide other necessary expenses of legal representation; or

(3) any person who has a right to counsel under section 46b-136 and who does not have the financial ability at the time of his request for representation to secure competent legal representation and to provide other necessary expenses of legal representation.

(g) If the Chief Public Defender or anyone serving under the Chief Public Defender determines that an individual is not eligible to receive the services of a public defender under this chapter, the individual may appeal the decision to the court before which the individual's case is pending.

Connecticut Statutes

Title 53. CRIMES

Chapter 939. OFFENSES AGAINST THE PERSON

Current through the 2019 Regular Legislative Session

§ 53-21. Injury or risk of injury to, or impairing morals of, children. Sale of children

(a) Any person who (1) wilfully or unlawfully causes or permits any child under the age of sixteen years to be placed in such a situation that the life or limb of such child is endangered, the health of such child is likely to be injured or the morals of such child are likely to be impaired, or does any act likely to impair the health or morals of any such child, or (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, or (3) permanently transfers the legal or physical custody of a child under the age of sixteen years to another person for money or other valuable consideration or acquires or receives the legal or physical custody of a child under the age of sixteen years from another person upon payment of money or other valuable consideration to such other person or a third person, except in connection with an adoption proceeding that complies with the provisions of chapter 803, shall be guilty of (A) a class C felony for a violation of subdivision (1) or (3) of this subsection, and (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.

(b) The act of a parent or agent leaving an infant thirty days or younger with a designated employee pursuant to section 17a-58 shall not constitute a violation of this section.

Connecticut Statutes
Title 53A. PENAL CODE
Chapter 952. PENAL CODE: OFFENSES
Part V. ASSAULT AND RELATED OFFENSES
Current through the 2019 Regular Legislative Session

§ 53a-60. Assault in the second degree: Class D or C felony

(a) A person is guilty of assault in the second degree when:

(1) With intent to cause serious physical injury to another person, the actor causes such injury to such person or to a third person; or

(2) with intent to cause physical injury to another person, the actor causes such injury to such person or to a third person by means of a deadly weapon or a dangerous instrument other than by means of the discharge of a firearm; or

(3) the actor recklessly causes serious physical injury to another person by means of a deadly weapon or a dangerous instrument; or

(4) for a purpose other than lawful medical or therapeutic treatment, the actor intentionally causes stupor, unconsciousness or other physical impairment or injury to another person by administering to such person, without his consent, a drug, substance or preparation capable of producing the same; or

(5) the actor is a parolee from a correctional institution and with intent to cause physical injury to an employee or member of the Board of Pardons and Paroles, the actor causes physical injury to such employee or member; or

(6) with intent to cause serious physical injury to another person by rendering such other person unconscious, and without provocation by such other person, the actor causes such injury to such other person by striking such other person on the head; or

(7) with intent to cause physical injury to another person, the actor causes such injury to such person by striking or kicking such person in the head while such person is in a lying position.

(b) Assault in the second degree is a class D felony or, if the offense resulted in serious physical injury, a class C felony.

Connecticut Statutes
Title 53A. PENAL CODE
Chapter 952. PENAL CODE: OFFENSES
Part V. ASSAULT AND RELATED OFFENSES
Current through the 2019 Regular Legislative Session

§ 53a-63. Reckless endangerment in the first degree: Class A misdemeanor

(a) A person is guilty of reckless endangerment in the first degree when, with extreme indifference to human life, he recklessly engages in conduct which creates a risk of serious physical injury to another person.

(b) Reckless endangerment in the first degree is a class A misdemeanor.

Connecticut Statutes
Title 53A. PENAL CODE
Chapter 952. PENAL CODE: OFFENSES
Part XI. BRIBERY, OFFENSES AGAINST THE ADMINISTRATION OF JUSTICE AND OTHER RELATED OFFENSES
Current through the 2019 Regular Legislative Session

§ 53a-167a. *[Effective Until 10/1/2019]* Interfering with an officer: Class A misdemeanor or class D felony

(a) A person is guilty of interfering with an officer when such person obstructs, resists, hinders or endangers any peace officer, special policeman appointed under section 29-18b, motor vehicle inspector designated under section 14-8 and certified pursuant to section 7-294d or firefighter in the performance of such peace officer's, special policeman's, motor vehicle inspector's or firefighter's duties.

(b) Interfering with an officer is a class A misdemeanor, except that, if such violation causes the death or serious physical injury of another person, such person shall be guilty of a class D felony.

Connecticut Statutes
Title 54. CRIMINAL PROCEDURE
Chapter 961. TRIAL AND PROCEEDINGS AFTER CONVICTION
Part I. DISCOVERY, TRIAL AND WITNESSES
Current through the 2019 Regular Legislative Session

§ 54-86e. *[Effective 10/1/2019]* Confidentiality of identifying information pertaining to victims of certain crimes. Availability of information to accused. Protective order information to be entered in registry

The name and address of the victim of a sexual assault under section 53a-70b of the general statutes, revision of 1958, revised to January 1, 2019, or section 53a-70 , 53a-70a, 53a-70c, 53a-71, 53a-72a, 53a-72b or 53a-73a, voyeurism under section 53a-189a, or injury or risk of injury, or impairing of morals under section 53-21, or of an attempt thereof, or family violence, as defined in section 46b-38a and such other identifying information pertaining to such victim as determined by the court, shall be confidential and shall be disclosed only upon order of the Superior Court, except that (1) such information shall be available to the accused in the same manner and time as such information is available to persons accused of other criminal offenses, and (2) if a protective order is issued in a prosecution under any of said sections, the name and address of the victim, in addition to the information contained in and concerning the issuance of such order, shall be entered in the registry of protective orders pursuant to section 51-5c.

Connecticut Rules - Practice Book

Connecticut Superior Court - Procedure in Criminal Matters

Chapter 37. ARRAIGNMENT

As amended through July 31, 2019

§ 37-6. Appointment of Public Defender

(a) If the judicial authority determines after investigation by the public defender that the defendant is indigent, the judicial authority may designate the public defender or a special public defender to represent the defendant unless, in a misdemeanor case, at the time of the application for appointment of counsel, the judicial authority decides or believes that disposition of the pending case will not result in a sentence involving incarceration or a suspended sentence of incarceration with a period of probation or conditional discharge, and makes a statement to that effect on the record. If the public defender or his or her office determines that a defendant is not eligible to receive the services of a public defender, the defendant may appeal the public defender's decision to the judicial authority in accordance with General Statutes § 51-297(g). The judicial authority may not appoint the public defender unless the judicial authority finds the defendant indigent following such appeal. If a conflict of interest or other circumstance exists which prevents the public defender from representing the defendant, the judicial authority, upon recommendation of the public defender or upon its own motion, may appoint a special public defender to represent the defendant.

(b) The fact that the judicial authority, in a misdemeanor case, decides or believes that disposition of the pending case will not result in a sentence involving incarceration or a suspended sentence of incarceration with a period of probation or conditional discharge, shall not preclude the judicial authority from appointing, in its discretion, a public defender or a special public defender to represent an indigent defendant.

Connecticut Rules - Practice Book

Connecticut Superior Court - Procedure in Criminal Matters

Chapter 44. GENERAL PROVISIONS

As amended through July 31, 2019

§ 44-1. Right to Counsel; Appointment in Specific Instances

A person who is charged with an offense punishable by imprisonment, or who is charged with violation of probation, or who is a petitioner in any habeas corpus proceeding arising from a criminal matter, or who is accused in any extradition proceeding, and who is unable to obtain counsel by reason of indigency shall be entitled to have counsel represent him or her unless:

(1) The person waives such appointment pursuant to Section 44-3 ; or

(2) In a misdemeanor case, at the time of the application for the appointment of counsel, the judicial authority decides to dispose of the charge without subjecting the defendant to a sentence involving immediate incarceration or a suspended sentence of incarceration with a period of probation, or it believes that the disposition of the charge at a later date will not result in such a sentence and it makes a statement to that effect on the record. If it appears to the judicial authority at a later date that if convicted the defendant will be subjected to such a sentence, counsel shall be appointed prior to trial or the entry of a plea of guilty or nolo contendere.

Connecticut Rules - Practice Book

Connecticut Superior Court - Procedure in Criminal Matters

Chapter 44. GENERAL PROVISIONS

As amended through October 24, 2018

§ 44-3. Waiver of Right to Counsel

A defendant shall be permitted to waive the right to counsel and shall be permitted to represent himself or herself at any stage of the proceedings, either prior to or following the appointment of counsel. A waiver will be accepted only after the judicial authority makes a thorough inquiry and is satisfied that the defendant:

(1) Has been clearly advised of the right to the assistance of counsel, including the right to the assignment of counsel when so entitled;

(2) Possesses the intelligence and capacity to appreciate the consequences of the decision to represent oneself;

(3) Comprehends the nature of the charges and proceedings, the range of permissible punishments, and any additional facts essential to a broad understanding of the case; and

(4) Has been made aware of the dangers and disadvantages of self-representation.

Connecticut Rules - Practice Book

Connecticut Superior Court - Procedure in Criminal Matters

Chapter 44. GENERAL PROVISIONS

As amended through July 31, 2019

§ 44-4. Standby Counsel for Defendant Self-Represented

When a defendant has been permitted to proceed without the assistance of counsel, the judicial authority may appoint standby counsel, especially in cases expected to be long or complicated or in which there are multiple defendants. A public defender or special public defender may be appointed as standby counsel only if the defendant is indigent and qualifies for appointment of counsel under General Statutes § 51-296, except that in extraordinary circumstances the judicial authority, in its discretion, may appoint a special public defender for a defendant who is not indigent.

Connecticut Rules - Practice Book

Connecticut Superior Court - Procedure in Criminal Matters

Chapter 44. GENERAL PROVISIONS

As amended through July 31, 2019

§ 44-5. Role of Standby Counsel

If requested to do so by the defendant, the standby counsel shall advise the defendant as to legal and procedural matters. If there is no objection by the defendant, such counsel may also call the judicial authority's attention to matters favorable to the defendant. Such counsel shall not interfere with the defendant's presentation of the case and may give advice only upon request.

Title 22. Criminal Procedure

Oklahoma Statutes Citationized

Title 22. Criminal Procedure

Chapter 25

Indigent Defense Act

Section 1355A - Indigent Request for Representation

Superceded **Superceded** **Superceded**

Effective: 05/06/2002

Cite as: O.S. §, ___

A. When an indigent requests representation by the System, such person shall submit an appropriate application to the court clerk, which shall state that the application is signed under oath and under the penalty of perjury and that a false statement may be prosecuted as such. The application shall state whether or not the indigent has been released on bond. In addition, if the indigent has been released on bond, the application shall include a written statement from the applicant that the applicant has contacted three named attorneys, licensed to practice law in this state, and the applicant has been unable to obtain legal counsel. A nonrefundable application fee of Forty Dollars ($40.00) shall be paid to the court clerk at the time the application is submitted, and no application shall be accepted without payment of the fee; except that the court may, based upon the financial information submitted, defer all or part of the fee if the court determines that the person does not have the financial resources to pay the fee at time of application, to attach as a court fee upon conviction. Any fees collected pursuant to this subsection shall be retained by the court clerk, deposited in the Court Clerk's Revolving Fund, and separately reported to the Administrative Office of the Courts.

B. 1. The Court of Criminal Appeals shall promulgate rules governing the determination of indigency pursuant to the provisions of Section 55 of Title 20 of the Oklahoma Statutes. The initial determination of indigency shall be made by the Chief Judge of the Judicial District or a designee thereof, based on the defendant's application and the rules provided herein.

2. Upon promulgation of the rules required by law, the determination of indigency shall be subject to review by the Presiding Judge of the Judicial Administrative District. Until such rules become effective, the determination of indigency shall be subject to review by the Court of Criminal Appeals.

C. Before the court appoints the System based on the application, the court shall advise the indigent or, if applicable, a parent or legal guardian, that the application is signed under oath and under the penalty of perjury and that a false statement may be prosecuted as such. A copy of the application shall be sent to the prosecuting attorney or the Office of the Attorney General, whichever is appropriate, for review. Upon request by any party including, but not limited to, the attorney appointed to represent the indigent, the court shall hold a hearing on the issue of eligibility for appointment of the System.

D. If the defendant is admitted to bail and the defendant or another person on behalf of the defendant posts a bond other than by personal recognizance, this fact shall constitute a rebuttable presumption that the defendant is not indigent.

E. The System shall be prohibited from accepting an appointment unless a completed application for court-appointed counsel as provided by Form 13.3 of Section XIII of the Rules of the Court of Criminal Appeals, 22 O.S. Supp. 2000, Ch. 18, App., has been filed of record in the case.

Historical Data

Laws 2001, HB 1804, c. 210, § 6, emerg. eff. July 1, 2001.

Citationizer© Summary of Documents Citing This Document

Cite Name	Level	
Title 22. Criminal Procedure		
Cite	Name	Level
22 O.S. 1355A,	Indigent Request for Representation	Cited

Citationizer: Table of Authority

Oklahoma Statutes
Title 22. Criminal Procedure
Chapter 25. Miscellaneous Provisions
Indigent Defense Act
Current through Laws 2019, c. 515.

§ 1355A. Indigent Request for Representation

A. When an indigent requests representation by the Oklahoma Indigent Defense System, such person shall submit an appropriate application to the court clerk, which shall state that the application is signed under oath and under the penalty of perjury and that a false statement may be prosecuted as such. The application shall state whether or not the indigent has been released on bond. In addition, if the indigent has been released on bond, the application shall include a written statement from the applicant that the applicant has contacted three named attorneys, licensed to practice law in this state, and the applicant has been unable to obtain legal counsel. A nonrefundable application fee of Forty Dollars ($40.00) shall be paid to the court clerk at the time the application is submitted, and no application shall be accepted without payment of the fee; except that the court may, based upon the financial information submitted, defer all or part of the fee if the court determines that the person does not have the financial resources to pay the fee at time of application, to attach as a court fee upon conviction. Any fees collected pursuant to this subsection shall be retained by the court clerk, deposited in the Court Clerk's Revolving Fund, and reported quarterly to the Administrative Office of the Courts.

B. 1. The Court of Criminal Appeals shall promulgate rules governing the determination of indigency pursuant to the provisions of Section 55 of Title 20 of the Oklahoma Statutes. The initial determination of indigency shall be made by the Chief Judge of the Judicial District or a designee thereof, based on the defendant's application and the rules provided herein.

2. Upon promulgation of the rules required by law, the determination of indigency shall be subject to review by the Presiding Judge of the Judicial Administrative District. Until such rules become effective, the determination of indigency shall be subject to review by the Court of Criminal Appeals.

C. Before the court appoints the System based on the application, the court shall advise the indigent or, if applicable, a parent or legal guardian, that the application is signed under oath and under the penalty of perjury and that a false statement may be prosecuted as such. A copy of the application shall be sent to the prosecuting attorney or the Office of the Attorney General, whichever is appropriate, for review. Upon request by any party including, but not limited to, the attorney appointed to represent the indigent, the court shall hold a hearing on the issue of eligibility for appointment of the System.

D. If the defendant is admitted to bail and the defendant or another person on behalf of the

defendant posts a bond, other than by personal recognizance, the court may consider such fact in determining the eligibility of the defendant for appointment of the System; provided, however, such consideration shall not be the sole factor in the determination of eligibility.

E. The System shall be prohibited from accepting an appointment unless a completed application for court-appointed counsel as provided by Form 13.3 of Section XIII of the Rules of the Court of Criminal Appeals, 22 O.S. 2001, Ch. 18, App., has been filed of record in the case.

EXHIBIT #4 Case No. A.C. 39379 [redacted]

AFFIDAVIT OF INDIGENCY — FEE WAIVER, CRIMINAL
JD-AP-48 Rev. 8-15
C.G.S. §§ 54-56g, 52-259b

STATE OF CONNECTICUT
SUPERIOR COURT
www.jud.ct.gov

ADA NOTICE
The Judicial Branch of the State of Connecticut complies with the Americans with Disabilities Act (ADA). If you need a reasonable accommodation in accordance with the ADA, contact a court clerk or an ADA contact person listed at www.jud.ct.gov/ADA.

Instructions to Person Applying for Waiver:
Print or type all information and sign affidavit in front of court clerk, notary public, or an attorney.
Instructions to Clerk:
If application is denied and a hearing is requested, schedule hearing and issue notice of hearing.

Name of case	Docket number
STATE OF CONNECTICUT v. MARCUS [redacted]	K10K-CR14-0325996-S

Specify fee to be waived (Copies, transcript, program fee, etc.)	If the request is for a transcript or for copies, what will the transcript or copies be used for?
SUBPEONA SERVICE ASSOC. FEES	

I. **Income** *(Net income after taxes; include all sources)* ..... Net income $ 0

Public Assistance Received: ☑ No ☐ Yes
(If yes, specify type): _____

II. **Dependents** *(Total number of dependents)* ..... Number of dependents 1

III. **Assets**

	Estimated Value	Mortgage Balance	Equity
A. Real Estate	$ 0	$ 0	Real estate $ 0
B. Motor Vehicles	$ 0	$ 0	Motor vehicle $ 0
C. Other personal property	$ 0	$ 0	Other $ 0

D. Savings accounts *(Total of all accounts)* ..... Savings $ 0

E. Checking accounts *(Total of all accounts)* ..... Checking $ 161.00

F. Stocks: *Name* N/A — Stock value $ 0

G. Bonds: *Name* N/A — Bond value $ 0

Total assets $ 161.00

IV. **Liabilities** *(Debts)*

Date	Source	Amount of Debt	Balance Due	Weekly Payment
		$	$	$
		$	$	$
		$	$	$
		$	$	$
		$	$	$

Total liability $

V. **Affidavit**

I certify that the information above is accurate to the best of my knowledge and that I can, if requested, submit documentation for all income, assets and liabilities listed above.

Notice: ▶ **Any false statement you make under oath that you do not believe to be true and that is intended to mislead a public servant in the performance of his or her official function may be punishable by a fine and/or imprisonment.**

(Attach relevant records)

Signed *(Applicant)*	Print name of person signed at left	Date signed
[signature]	MARCUS [redacted]	02/29/2016
Subscribed and sworn to before me: On *(Date)* 2/29/16	Signed *(Notary Public, Commissioner of Superior Court, Assistant Clerk)* [signature]	

For purposes of determining whether a party is indigent and unable to pay a fee to the court or to pay the cost of service:

"There shall be a rebuttable presumption that a person is indigent and unable to pay a fee or fees or the cost of service of process if (1) such person receives public assistance or (2) such person's income after taxes, mandatory wage deductions and child care expenses is one hundred twenty-five per cent or less of the federal poverty level. For purposes of this subsection, "public assistance" includes, but is not limited to, state-administered general assistance, temporary family assistance, aid to the aged, blind and disabled, supplemental nutrition assistance, and Supplemental Security Income." Section 52-259b(b) of the Connecticut General Statutes.

Order of Court

The Court, having found the applicant ☒ Indigent and unable to pay ☐ Not indigent orders the application:

☒ Granted as follows:

☒ 1. The following fees payable to the court are waived. *(specify:)* service of subpoenas

☐ 2. The following fees are ordered paid by the State:

☐ service of process not to exceed $_____ *(specify amount if limited)*

☐ other *(specify:)* _____

☐ Denied

☐ Denied: Applicant has repeatedly filed actions with respect to the same or similar matters, such filings establish an extended pattern of frivolous filings that have been without merit, the application sought is in connection with an action before the court that is consistent with the applicant's previous pattern of frivolous filings, and the granting of such application would constitute a flagrant misuse of Judicial Branch resources.

By the Court *(Print name of Judge)*	On *(Date)*	Signed *(Judge, Assistant Clerk)*	Date signed
Barbara B Jaghlord	2/29/2016		2.29.16

Request For Hearing On Fee Waiver Application *(Only if initially denied without a hearing)*

☐ I request a court hearing on the application for a fee waiver.

Signed *(Applicant)*	Date signed

	Superior Court Judicial District or Geographical Area number	Date of hearing	Time of hearing	Room number
Hearing To Be Held At	Address of court *(Number, street and town)*		Signed *(Assistant Clerk)*	

Order Of Court After Hearing

The Court, having found the applicant ☐ Indigent and unable to pay ☐ Not indigent orders the application:

☐ Granted as follows:

☐ 1. The following fees payable to the court are waived. *(specify:)* _____

☐ 2. The following fees are ordered paid by the State:

☐ service of process not to exceed $_____ *(specify amount if limited)*

☐ other *(specify:)* _____

☐ Denied

☐ Denied: Applicant has repeatedly filed actions with respect to the same or similar matters, such filings establish an extended pattern of frivolous filings that have been without merit, the application sought is in connection with an action before the court that is consistent with the applicant's previous pattern of frivolous filings, and the granting of such application would constitute a flagrant misuse of Judicial Branch resources.

By the court *(Print name of Judge)*	On *(Date)*	Signed *(Judge, Assistant Clerk)*	Date signed