No. 25-

IN THE

Supreme Court of the United States

JAMES MAHARG,

Petitioner,

v.

STATE OF CONNECTICUT,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

ERIC DEL POZO
Counsel of Record
JOETTE KATZ
SHIPMAN & GOODWIN LLP
One Constitution Plaza
Hartford, CT 06103
(860) 251-5332
edelpozo@goodwin.com

Counsel for the Petitioner

384549

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

QUESTION PRESENTED

The erroneous admission over objection of a defendant's coerced confession at a criminal trial will require a retrial unless the reviewing court is "'able to declare a belief that [the error] was harmless beyond a reasonable doubt.'" *Arizona v. Fulminante*, 499 U.S. 279, 295 (1991) (quoting *Chapman v. California*, 386 U.S. 18, 24 (1967)). Here, in a bench trial, the court denied the defendant's motion to suppress testimony about his alleged murder confession—given in a hospital emergency room, two hours after he had collapsed in a seizure in the police barracks, thus ending a thirteen-hour overnight interrogation that the trial court separately held to be unconstitutionally coercive. In convicting the defendant of murder, the trial court expressly credited the testimony about the hospital confession, but to that finding dropped a footnote stating that the evidence established guilt beyond a reasonable doubt even in the confession's absence. The trial court then found the defendant guilty of murder based on all the evidence presented. The Connecticut Supreme Court relied on the footnoted disclaimer in concluding that any constitutional error in admitting the confession into evidence would have been harmless beyond a reasonable doubt. The question presented is:

Whether, in a criminal bench trial for murder, a trial judge who admits over objection a defendant's coerced confession to that offense may later insulate the constitutional error from meaningful appellate review by issuing a posttrial "finding" that the evidence would have established guilt beyond a reasonable doubt at a trial conducted without the confession.

RELATED PROCEEDINGS

State v. Maharg, No. DBD-CR-19-0159438 (Conn. Super. Ct., Danbury Jud. Dist.) (posttrial judgment of conviction entered on May 10, 2023)

State v. Maharg, No. SC 20855 (Conn.) (judgment affirmed on July 8, 2025)

TABLE OF CONTENTS

Table of Contents

TABLE OF APPENDICES

TABLE OF CITED AUTHORITIES

Page

Cases

Cited Authorities

Cited Authorities

Page

Page

Constitutional Provisions & Statutes

Page

Other Authorities

PETITION FOR A WRIT OF CERTIORARI

James Maharg respectfully petitions for a writ of certiorari to review the judgment of the Connecticut Supreme Court.

OPINIONS BELOW

The opinion of the Connecticut Supreme Court (Pet. App. 1a-31a) is reported at 337 A.3d 718 (Conn. 2025). The relevant opinions of the Connecticut Superior Court (Pet. App. 32a-53a, 54a-82a) are unreported.

JURISDICTION

The Connecticut Supreme Court entered judgment on July 8, 2025. Pet. App. 1a. On September 9, 2025, this Court entered an order extending the deadline for filing a petition for certiorari until November 20, 2025. This Court has jurisdiction under 28 U.S.C. § 1257(a).

RELEVANT CONSTITUTIONAL PROVISIONS

"No person . . . shall be compelled in any criminal case to be a witness against himself . . . ." U.S. Const. amend. V.

"[N]or shall any State deprive any person of life, liberty, or property, without due process of law . . . ." U.S. Const. amend. XIV, § 1.

STATEMENT OF THE CASE

A. Legal Background

Under the U.S. Constitution, no person "shall be compelled in any criminal case to be a witness against himself," U.S. Const. amend. V, "nor shall any State deprive any person of life, liberty, or property, without due process of law," *id.* amend. XIV, § 1. Use of a defendant's involuntary, or coerced, confession at his criminal trial infringes each of these guarantees. *See, e.g.*, *Kansas v. Ventris*, 556 U.S. 586, 590 (2009) (Fifth Amendment); *Mincey v. Arizona*, 437 U.S. 385, 398 (1978) (due process).

The well-known exclusionary rule effectuates these prohibitions by requiring trial courts, on timely request, to exclude unconstitutionally obtained confessions from the evidence offered against criminal defendants at trial. *See generally Crane v. Kentucky*, 476 U.S. 683, 687 (1986). "Involuntary confessions, of course, may be given either simultaneously with or subsequently to unlawful pressures, force or threats." *Lyons v. Oklahoma*, 322 U.S. 596, 602 (1944). Thus, when a defendant allegedly has twice confessed, and the court rules the first confession involuntary, the government must demonstrate that the second confession embodied an independent choice, untainted by lingering impropriety. *See, e.g.*, *Oregon v. Elstad*, 470 U.S. 298, 309-14 (1985); *Lyons*, 322 U.S. at 602.

Sometimes, trial courts get suppression questions wrong—implicating the harmless-error rule. A retrial is avoidable only if the reviewing court can "declare a belief that [the error] was harmless beyond a reasonable doubt." *Chapman*, 386 U.S. at 24. To meet that standard,

"the beneficiary of a constitutional error"—i.e., the government—must demonstrate that "the error complained of did not contribute to the verdict obtained." *Id.* The core question is "'whether there is a reasonable possibility that the evidence complained of might have contributed to the conviction.'" *Id.* (quoting *Fahy v. Connecticut*, 375 U.S. 85, 86-87 (1963)).

The modern concept of harmless error arose in reaction to the unduly rigid Exchequer Rule, which English courts adopted in the 1800s, and which presumed prejudice from even insignificant trial errors in admitting evidence or instructing juries. *See* Wayne R. LaFave et al., *Origins of harmless error review*, 7 Crim. Proc. § 27.6(a) (4th online ed.). "As a result, retrials became so commonplace that English litigation 'seemed to survive until the parties expired.'" *Id.* (quoting Steven H. Goldberg, *Harmless Error: Constitutional Sneak Thief*, 71 J. Crim. L. & Criminology 421, 422 (1980)). As this Court has thus observed, "when courts fashion rules whose violations mandate automatic reversals, they 'retreat from their responsibilities, becoming instead impregnable citadels of technicality.'" *United States v. Hasting*, 461 U.S. 499, 509 (1983) (cleaned up) (quoting Roger Traynor, *The Riddle of Harmless Error* 14 (1970)).

By the 1900s, all fifty States had harmless-error statutes or rules with varying particulars, and Congress had enacted a version for the federal courts. *See Chapman*, 386 U.S. at 22 (citing 28 U.S.C. § 2111). Nevertheless, per se reversal endured for certain trial errors deemed corrosive to the factfinding process. In that category was admitting a coerced confession, which "vitiate[d] the judgment"—"even though there may have been sufficient

evidence, apart from the coerced confession, to support a judgment of conviction." *Payne v. Arkansas*, 356 U.S. 560, 568 (1958).

Since then, the Court has added coerced confessions to the list of trial errors subject to harmless-error review. *See Fulminante*, 499 U.S. at 306-12. That development did not, however, adopt the previously rejected and "much more lenient rule which would allow affirmance of a conviction if the evidence other than the involuntary confession was sufficient to sustain the verdict." *Id.* at 309. Rather, "[w]hen reviewing the erroneous admission of an involuntary confession, the appellate court . . . reviews the remainder of the evidence against the defendant to determine whether the admission of the confession was harmless beyond a reasonable doubt." *Id.* at 310. In doing so, the reviewing court must "exercise extreme caution before determining that the admission of the confession at trial was harmless." *Id.* at 296.

Broadly speaking, the Court has summarized the harmless-error inquiry as follows: "Is it clear beyond a reasonable doubt that a rational jury would have found the defendant guilty absent the error?" *Neder v. United States*, 527 U.S. 1, 18 (1999). The question facing an appellate court "is not whether, in a trial that occurred without the error, a guilty verdict would surely have been rendered, but whether the guilty verdict actually rendered in *this* trial was surely unattributable to the error." *Sullivan v. Louisiana*, 508 U.S. 275, 279 (1993). Pertinent factors include the evidence's importance to the prosecution's theory, whether it was cumulative, the extent of corroborating or contradictory evidence, "and, of course, the overall strength of the prosecution's case."

Delaware v. Van Arsdall, 475 U.S. 673, 684 (1986). For example, the existence of overwhelming and uncontested evidence on the point in question may render an error harmless. *See, e.g.*, *Neder*, 527 U.S. at 17; *Harrington v. California*, 395 U.S. 250, 254 (1969).

This Court's harmless-error decisions have generated scholarly debate about the nature of the governing standard, largely focusing on jury trials. *See* Daniel Epps, *Harmless Errors and Substantial Rights*, 131 Harv. L. Rev. 2117, 2155-58 (2018). That debate is especially academic here because this case turns on how to assess the prejudicial impact of a suppression error in a bench trial. And not just any suppression error, but the wrongful admission of an involuntary confession to murder. The Court has scarcely addressed the standards of review for bench trials, let alone articulated how *Chapman* treats constitutional errors in this context. In the void, the Connecticut Supreme Court has espoused an overly deferential and malleable standard that swings the pendulum from the discredited practice of automatic reversal to a functional recipe for insurmountable error.

B. Factual Background

In March 2019, a distraught Maharg called 911 overnight, to report having encountered his husband dead in their house. Maharg told the 911 operator that the couple had been drinking heavily, that the husband had hit his head on a counter, causing a wound, and that Maharg had tried to clean the blood before the couple retired to bed.

A responding trooper brought Maharg to the State Police barracks, where a team of detectives interrogated

him—otherwise alone and without counsel—for almost thirteen hours, from the mid-morning until around 5:30 p.m. Near the start, Maharg "was shaking so violently that he was unable to sign his name" on the *Miranda* form. Pet. App. 75a; *see id.* at 23a (reproduced scrawled "signature"). Throughout, Maharg incessantly pleaded to stop the interview and to go home, to no avail. A few times, he vomited. Despite the detectives' bringing up a hatchet, and misrepresenting that testing had found human blood on it, Maharg continually denied knowledge or recollection of how the decedent's injuries had come about.

Things took a turn for the worse after Maharg explicitly asked, without success, "to go to the hospital" to detoxify from the alcohol. State Ex. 27 (Interrogation Tr.) at 542. He declared, "I need help," to which a detective responded, "I know you do." *Id.* at 549. The detectives carried on with the questioning, during which Maharg briefly entertained the hatchet supposition before stating that he was just accepting what the detectives had said, *id.* at 606, and later clarifying that "it couldn't have been the hatchet," *id.* at 622. Subsequently, Maharg rambled: "I don't know. I mean, I wouldn't know. There's—I killed my husband. I don't know." *Id.* at 623. The detectives pressed him to identify a putative weapon, for which he did not "have the answer." *Id.* at 624.

Similar inquiries persisted until Maharg fell to the floor, turned blue, had a seizure, and had to be taken by ambulance to Waterbury Hospital. In the hospital emergency room, approximately two hours post-arrival, Maharg allegedly exclaimed: "My life is ruined. I murdered Tom. How do I tell people I killed my husband?" Pet. App. 37a, 64a. Stationed seven to ten feet away, a state trooper wrote these supposed statements in a log book.

As Maharg headed to the hospital, a scene investigator with the State Office of the Chief Medical Examiner (OCME) arrived at Maharg's house. The OCME investigator's written report—forming part of the autopsy file—recounted information that the investigator had obtained "from police personnel as well as personal observation." Def. Ex. G (Report of Investigation) at 1. This report began by stating that "[t]he husband confessed to murdering the decedent by using an ax to his head," before adding that "[t]he ax the suspect claimed to use was in a wooden bucket in a shed with other tools." *Id.* The next morning, an OCME Associate Medical Examiner performed an autopsy and concluded that the decedent had been killed via chop wounds to the head. State Ex. 11 (Report of Autopsy). An axe and hatchet found on Maharg's property later tested negative for blood.

C. Procedural History

1. Maharg waived a jury and proceeded to a trial before a panel of three Superior Court judges.[1] For efficiency's sake, the parties agreed to conduct the suppression hearing in the middle of the trial.

Before that hearing occurred, the State's medical examiner testified regarding her conclusion that the

---

1. In Connecticut, "[i]f the accused is charged with a crime punishable by death, life imprisonment without the possibility of release or life imprisonment and elects to be tried by the court, the court shall be composed of three judges to be designated by the Chief Court Administrator, or the Chief Court Administrator's designee, who shall name one such judge to preside over the trial. Such judges, or a majority of them, shall have power to decide all questions of law and fact arising upon the trial and render judgment accordingly." Conn. Gen. Stat. § 54-82(b).

decedent had suffered chop injuries, caused by "machetes, axes or hatchets." Trial Tr. (10/12/23) at 49. On cross-examination, defense counsel delved into the scene investigator's report, in an effort to establish that the dubious confession recited in the report had compromised the autopsy finding. When asked whether the scene investigator had mentioned certain statements and a weapon, the medical examiner recalled that "there were comments in the report." *Id.* at 95. When asked how she would have classified the death without any information from law enforcement, this forensic witness responded that she "would have been very concerned by the appearance of the injuries," but "would not have been able to explain [the] many impacts." Trial Tr. (10/13/23) at 43. She further confirmed that the decedent's head wounds were surface-level, with hallmarks of blunt force, but without any indicia of internal or structural injury, signifying that minimal force had been applied. Trial Tr. (10/12/23) 54, 127-128, 153-156. Agreeing with and interpreting those underlying findings, the defense's forensic expert witness disagreed that the decedent had "sustained serious, so called, chop wounds," concluding that the injuries must have arisen in another, unidentified way. Trial Tr. (10/31/23) at 27-28.

Following the midtrial suppression hearing, as reflected in a written opinion, the panel suppressed Maharg's statements during the barracks interrogation as having been "extracted" involuntarily, in violation of his Fifth and Fourteenth Amendment rights. Pet. App. 79a-80a. In doing so, the court discussed at length the detectives' interrogation of Maharg, inclusive of the "repeated requests to terminate the interview and critical medical deterioration of the defendant throughout the thirteen-hour prolonged interview." *Id.* at 81a. As the court

found, only after he had explicitly (and unsuccessfully) relayed his "'need to go to the hospital'" did Maharg "for the first time" begin to offer even arguably incriminating statements. *Id.* at 79a. Even so, the panel assessed Maharg's "spontaneous statements" in a trooper's presence in the hospital emergency room—i.e., the alleged murder confession—to have been "freely and voluntarily made." *Id.* at 80a-81a. Despite observing that Maharg had made these statements "approximately two hours after he arrived at the hospital," where he had remained "in custody from the time his interrogation started," the court concluded that "the defendant spontaneously stated that he murdered his husband . . . [i]n the absence of coercive police activity."[2] *Id.* at 81a.

At the close of the State's case, the defense moved for a judgment of acquittal based on evidentiary insufficiency. Among other things, defense counsel maintained that although "something happened" in the house, the State had failed to show that the defendant intended to cause his spouse's death. Trial Tr. (10/20/23) at 76-78. The prosecutor rejoined that Maharg had cleaned up blood before dialing 911, then later, at the hospital, had stated "that I murdered Tom." *Id.* at 82. The State thus insisted "that this defendant intended, based on his own statements," to commit a murder. *Id.* at 83. The court denied the motion for acquittal. *Id.* at 85.

On summation, the prosecutor quoted Maharg's alleged hospital confession verbatim, Trial Tr. (11/02/23)

---

2. The trial court also noted that, in the emergency room, Maharg "had eaten a turkey sandwich," which he promptly "vomited." Pet. App. 64a.

at 30, then adjured the court to "look at the statements," *id.* at 61.

The panel convicted Maharg of murder, in violation of Conn. Gen. Stat. § 53a-54a.[3] In its written opinion, the panel credited the State's autopsy finding, as well as the evidence of Maharg's emergency-room statements, in concluding that Maharg had intentionally attacked his husband with a sharp-edged weapon. Pet. App. 49a, 51a n.5. A footnote within the opinion's findings of fact asserted as follows: "The panel did not suppress the spontaneous statements the defendant made within [the state trooper's] earshot because they were neither made in response to police interrogation nor the result of coercive police conduct. Nonetheless, the panel unanimously concluded that the evidence established the defendant's guilt beyond a reasonable doubt, even in the absence of these statements."[4] *Id.* at 37a n2. The panel then found Maharg guilty of murder "[b]ased upon the evidence presented"—without qualification. *Id.* at 49a, 52a. This nearly seventy-year-old defendant received an aggregate effective prison sentence of thirty-five years. *See* Sentencing Tr. (05/10/23) at 23.

---

3. The panel likewise entered a guilty verdict for tampering with evidence, in violation of Conn. Gen. Stat. § 53a-155, based on the findings that Maharg had cleaned blood from the decedent and house and repositioned the decedent's body. Maharg did not challenge that conviction, the prison term for which has elapsed.

4. The court's posttrial opinion noted that the stationhouse interrogation had been suppressed and that, "[a]ccordingly, the panel did not consider the content of the interview in reaching its decision." Pet. App. 37a n.1.

2. On direct appeal to the Connecticut Supreme Court,[5] Maharg raised two claims of prejudicial constitutional error. First, he argued that the unlawful barracks interrogation had tainted the State's autopsy finding of a chop-wound homicide.[6] Second, he asserted that the putative emergency-room confession was legally inseparable from the barracks ordeal and was therefore improperly admitted into evidence. In responding to the second issue, the State relied *exclusively* on the trial panel's footnoted disclaimer, quoted above, to argue that the Supreme Court could bypass the constitutional claim's merits because error, if any, in the hospital statements' admission would have been harmless beyond a reasonable doubt.

In affirming the conviction, the Connecticut Supreme Court held that the trial record did not permit a conclusion, as a matter of law, that the State's forensic evidence had resulted from unconstitutional conduct. Pet. App. 12a-15a. As for the hospital confession, that court accepted the State's invitation: it declined to decide whether the admission of Maharg's emergency-room statements had violated the Constitution, reasoning that any such error would have been harmless. *Id.* at

5. *See* Conn. Gen. Stat. § 51-199(b)(3) (authorizing direct appeals to Connecticut Supreme Court of certain convictions, including for Class A felonies).

6. Acknowledging that trial counsel had not formally preserved this legal argument, Maharg sought relief under *State v. Golding*, 213 Conn. 233 (1989), which permits review of otherwise unpreserved constitutional claims if the appellate record suffices to demonstrate the violation as a matter of law.

18a-21a. More specifically, the Connecticut Supreme Court "agree[d] with the state" that the outcome turned on the trial court's sentiment "that, even if it did not consider the hospital confession, the other evidence established the defendant's guilt beyond a reasonable doubt." *Id.* at 18a. The Connecticut Supreme Court emphasized that "the trial court's observation is strong evidence of the impact the hospital confession had," *id.* at 19a n.15, in itself confirming "that the defendant's hospital confession did not materially impact the court or the result of the trial," *id.* at 20a. The court's discussion on appeal did not refer to any eyewitness testimony, surveillance video, or putative murder weapon in evidence—for there was none.

Three Connecticut Justices issued a concurring opinion, which began by calling this "a textbook case that demonstrates, in both dramatic and dangerous fashion, what can go wrong when the police improperly conduct an interview of a suspect." *Id.* at 22a. This opinion recounted "the shockingly disturbing circumstances under which the state police conducted the defendant's interrogation," all "while he was in a seriously compromised medical state." *Id.* The concurring opinion noted that, during the interrogation, "the defendant acceded to the officers' suggested narrative that he had used a hatchet to murder the victim—which was never supported by any physical evidence." *Id.* at 24a. Despite "not consider[ing] this a paradigmatic case that our system worked," the concurring Justices voted to affirm Maharg's conviction—including the ruling that admission of the emergency-room statements, if error, would have been harmless. *Id.* at 31a.

REASONS FOR GRANTING THE PETITION

On appeal from this bench trial gone awry, the Connecticut Supreme Court adopted an approach to harmless-error review that contradicts this Court's established precedents, is impracticable to apply, breeds significant unfairness, and yields unjustifiable results. Review of this important question is warranted to restore coherence to appellate review of federal constitutional errors.

I. The Connecticut Supreme Court's Decision Contradicts Several of This Court's Precedents.

The petition should be granted because the Connecticut Supreme Court's harmless-error determination conflicts with relevant decisions of this Court. To begin, a state court's formulation or application of the harmlessness standard for constitutional errors "is every bit as much of a federal question as what particular federal constitutional provisions themselves mean, what they guarantee, and whether they have been denied." *Chapman*, 386 U.S. at 21. Here, that federal question warrants this Court's attention. An appellate court evaluating an improperly admitted confession's effect on a guilty verdict is *supposed* to assess, for example, the evidence's importance to the prosecution's theory, whether it was cumulative, the extent of corroborating or contradictory evidence, and the overall strength of the prosecution's case. *See Van Arsdall*, 475 U.S. at 684. In forsaking that analysis in this case, the state court ran afoul of this Court's teachings in at least three overlapping ways.

First, the state court's determination conflicts with the federal harmless-error test for a coerced confession

prescribed by *Arizona v. Fulminante*, 499 U.S. 279. Wrongfully admitted coerced confessions are subject to *Chapman*'s harmless-error analysis. *See id.* at 309. To perform that inquiry "[w]hen reviewing the erroneous admission of an involuntary confession, the appellate court, as it does with the admission of other forms of improperly admitted evidence, simply reviews the remainder of the evidence against the defendant to determine whether the admission of the confession was harmless beyond a reasonable doubt." *Id.* at 310. Moreover, this Court has expressly rejected the "much more lenient rule which would allow affirmance of a conviction if the evidence other than the involuntary confession was sufficient to sustain the verdict." *Id.* at 309 (citing *Payne*, 356 U.S. at 567-68). "Such a test would, of course—unlike the harmless-error test—make the admission of an involuntary confession virtually risk-free for the State." *Id.*

The Connecticut Supreme Court's absolution-by-footnote rule impermissibly substitutes what amounts to sufficiency review for the requisite true harmlessness analysis. That court assumed that the hospital confession should have been suppressed as involuntary, triggering harmless-error review under *Chapman* and *Fulminante*. *See* Pet. App. 18a-21a. But rather than perform the necessary analysis, the appellate court simply "agree[d] with the state" that any constitutional error would be harmless because "the trial court explained that, even if it did not consider the hospital confession, the other evidence established the defendant's guilt."[7] *Id.* at 18a.

7. As a refresher, after reiterating that the alleged hospital confession had not been suppressed—and apparently standing by that decision—"the panel unanimously concluded that the evidence

Whereas the trial court's footnote indeed alluded to unspecified guilt-establishing "evidence" against the defendant, the Connecticut Supreme Court failed to fulfill its responsibility because it never independently canvassed the record to assess the putative error's prejudicial effect. *See Yates v. Evatt*, 500 U.S. 391, 405 (1991) ("As a threshold matter, the State Supreme Court did not undertake any explicit analysis to support its view of the scope of the record to be considered in applying *Chapman*."), *disapproved on other grounds by Estelle v. McGuire*, 502 U.S. 62 (1991); *see also Van Arsdall*, 475 U.S. at 681 (harmless-error analysis looks to "the whole record"); *Hasting*, 461 U.S. at 509 n.7 (same).

Without that undertaking, the Connecticut Supreme Court could only have reverted to assessing whether the other evidence surpassed basic sufficiency review. The result is a putative harmless-error standard much more lenient than the one the law mandates for erroneously admitted involuntary confessions. *See Fulminante*, 499 U.S. at 309; *see also Fahy*, 375 U.S. at 86 ("We are not concerned here with whether there was sufficient evidence on which the petitioner could have been convicted without the evidence complained of."). Alternatively, and even more rudderless, the reviewing court might implicitly have weighed the remaining proof to reach a conclusion about the defendant's probable guilt. Unsurprisingly, this Court has long eschewed that approach to ascertaining harmless error—to which appellate tribunals are institutionally unsuited. *See Bollenbach v. United States*, 326 U.S. 607, 615 (1946) ("From presuming too often all

---

established the defendant's guilt beyond a reasonable doubt, even in the absence of these statements." Pet. App. 37a n2.

errors to be 'prejudicial,' the judicial pendulum need not swing to presuming all errors to be 'harmless' if only the appellate court is left without doubt that one who claims its corrective process is, after all, guilty."); *see also Neder*, 527 U.S. at 19 (reaffirming that appellate court properly conducting harmless-error review does not "become in effect a second jury" (quotation marks omitted)). Either way, the state court's determination strays from *Fulminante*'s straightforward dictates.

Second, the state court's decision ignores this Court's explanation of the harmlessness inquiry in *Sullivan v. Louisiana*, 508 U.S. 275. There, the Court held that an improper jury instruction on reasonable doubt represented a structural error mandating a retrial without a further analysis of prejudice. In reaching that conclusion, the Court clarified "the proper role of an appellate court engaged in the *Chapman* inquiry." *Id.* at 280. That role is not "to hypothesize a guilty verdict that was never in fact rendered." *Id.* at 279. Nor is the proper inquiry "whether, in a trial that occurred without the error, a guilty verdict would surely have been rendered, but whether the guilty verdict actually rendered in *this* trial was surely unattributable to the error." *Id.*

Ignoring those commands, the Connecticut Supreme Court construed what it deemed the dispositive footnote to mean that the trial court "would have found the defendant guilty beyond a reasonable doubt in the absence of the hospital confession." Pet. App. 21a. But there *was* no trial conducted in the absence of that alleged confession—which the State introduced, which the trial court admitted over objection, and which featured prominently in the proceedings. Whether an item of admitted evidence was

surely immaterial to the verdict differs from whether the factfinder could have reached a similar result had the evidence never been admitted. And here, the trial court premised the guilty verdict actually rendered "on the evidence presented"—without limitation. *Id.* at 49a, 52a.

Although this case involved a bench trial, and does not involve a claim of structural error, *Sullivan*'s principle governs. If a trial court postulates an alternative verdict based on a subset of evidence, an appellate court cannot rely on that maneuver to excuse a suppression error, for "[t]here is no *object*, so to speak, upon which harmless-error scrutiny can operate." *Sullivan*, 508 U.S. at 280. A conclusion that the contested evidence might not have been strictly necessary to the verdict "does not satisfy all of *Chapman*'s concerns." *Yates*, 500 U.S. at 407. In this way, a reviewing court's omission of harmless-error review under *Chapman* is tantamount to its inability to apply harmless-error review under *Sullivan*.

Third, the state court's determination effectively excuses the government from meeting its burden to demonstrate harmlessness. Under *Chapman*'s framework, "constitutional error, in illegally admitting highly prejudicial evidence or comments, casts on someone other than the person prejudiced by it a burden to show that it was harmless." 386 U.S. at 24. This standard "requir[es] the beneficiary of a constitutional error to prove beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained." *Id.*

In *Fulminante*, the Court reiterated that a wrongfully admitted coerced confession should "be quantitatively assessed in the context of other evidence presented in

order to determine whether its admission was harmless beyond a reasonable doubt." 499 U.S. at 308. Here, the State would not have relished that obligation, after repeatedly keying on the defendant's statements to argue that the evidence supported a murder conviction. *See, e.g.*, *supra* at 9-10. On appeal, the State thus entirely outsourced the harmlessness inquiry to the trial court's conclusory pronouncement that other evidence established guilt. The State's brief failed to cite a single other strand of evidence, or facet of the trial, to fortify such a harmless-error showing. The seminal footnote served improperly to shift the burden to the defendant to demonstrate prejudice, contrary to *Chapman*'s core premise. Compounding the issue, carrying this burden would appear to demand a showing that the trial court's own psychological self-assessment was wrong.

A more customary approach would not have entailed nearly these contortions. When the State chose to introduce testimony about the defendant's alleged second confession, the trial court (acting as judge) had to admit or exclude the confession. Once admitted, the trial court (acting as factfinder) could have credited this evidence or not. On appeal, the Supreme Court (acting as reviewer) needed to determine whether the suppression decision was error and, if so, whether the error was harmless beyond a reasonable doubt. For its part, the State (acting as advocate) could have—and, if possible, should have—presented independent arguments on these points. Instead, the State treated the trial court as having impliedly recognized, and immunized, its own error in admitting proof of a confession that the State continued to assert had been lawfully obtained. These departures from ordinary procedure justify granting the petition.

II. This Case Presents an Optimal Vehicle for Examining the Important Question of the Harmless-Error Standard for Bench Trials.

In addition, review is warranted because the proper harmless-error standard for bench trials presents an important question of federal law that the Court should examine. If followed, the Connecticut Supreme Court's approach threatens to upend harmless-error review in the subset of criminal cases tried to a court instead of a jury. This case presents an ideal vehicle for evaluating this important question, which is properly preserved and cleanly presented.

Although prior appellate courts have purported to permit trial judges' commentary in bench trials to inform review of alleged errors, in several such cases the trial courts' commentary was not itself dispositive, unlike here.

For example, the Fourth Circuit has written that "in determining if an error is harmless, a reviewing court may consider the entire record, including the trial court's discussion of its error during post-trial proceedings." *United States v. Palin*, 874 F.3d 418, 422 (4th Cir. 2017). For that proposition, the circuit cited a prior case in which a district judge presiding over a bench trial had referred offhand to codefendants' guilty pleas, but clarified that they had no effect on the defendant's conviction for tax fraud, which "rested solely on the government's 'overwhelming' evidence." *United States v. Poole*, 640 F.3d 114, 120 (4th Cir. 2011). And there, the reviewing court explicitly "agree[d] with the district court's characterization of the evidence in th[e] case as 'overwhelming.'" *Id.*

The Seventh Circuit has ostensibly credited a district judge's "emphatic" on-the-record insistence "that his holding [of guilt] stood regardless" of whether "incriminating statements were suppressed." *United States v. Lee*, 618 F.3d 667, 670 (7th Cir. 2010). Yet in that case, the circuit also expressly concluded that no constitutional violation had occurred, *id.*, and that there was otherwise "powerful evidence" of the defendant's "guilt on all counts," *id.* at 674.

Prior to this case, the Connecticut Supreme Court cited *Lee* in holding that a judge's remarks after a bench trial merely "reinforce[d]" an independent appellate "conclusion that the improper admission of the defendant's video-recorded statement had no impact" on his felony-murder conviction. *State v. Alexander*, 343 Conn. 495, 510 (2022). There, the defendant's statement—not a confession—had placed him near the scene of a shooting, but so too did surveillance footage and three eyewitnesses' accounts. *See id.* at 509.

These decisions have helped to pave the way for the trial court's single-sentence evisceration of *Chapman* here.[8] This brand of appellate laxity towards error in bench trials has reached its endpoint. Meanwhile, bench trials will continue to happen, and *Chapman*'s harmless-error doctrine is "probably the most cited rule in modern criminal appeals." William M. Landes & Richard A. Posner, *Harmless Error*, 30 J. Legal Stud. 161, 161 (2001). A course correction is needed.

---

8. Although intrastate legal developments are not ordinarily this Court's focus, the glide path from *Alexander* to the decision here highlights the risks of empowering trial courts via offhand statements to insulate their own errors in bench trials from appellate review.

In particular, the Connecticut Supreme Court's approach stacks the deck against criminal defendants in bench trials. An improperly admitted involuntary confession still counts towards evidentiary sufficiency, which looks to "all of the evidence [the trial court] has admitted"—whether erroneously or not. *Lockhart v. Nelson*, 488 U.S. 33, 41-42 (1988); *see Jackson v. Virginia*, 443 U.S. 307, 319 (1979). Thus, even in bench trials, sufficiency review may rely on an "erroneously admitted confession." *United States v. Preston*, 751 F.3d 1008, 1029 (9th Cir. 2014). Under the Connecticut Supreme Court's rule, however, a trial court's superfluous commentary in rendering the verdict can insulate the same coerced confession from meaningful review for suppression error. This no-win situation for the defendant "make[s] the admission of an involuntary confession virtually risk-free for the State." *Fulminante*, 499 U.S. at 309.

The challenged ruling also artificially dilutes the harmlessness standard for confessions. "A confession is like no other evidence." *Id.* at 296. Given its often "dramatic" and "devastating" effect, *id.* at 312, courts must "exercise extreme caution before determining that the admission of the confession at trial was harmless," *id.* at 296; *accord Michaels v. Davis*, 144 S. Ct. 914, 915 (2024) (Jackson, J., dissenting from denial of certiorari) ("[T]his Court has long held that courts must 'exercise extreme caution' when determining whether the admission at trial of an illegally obtained confession constitutes a harmless error." (quoting *Fulminante*, 499 U.S. at 296)). Crediting a trial court's retrospective sentiment that a defendant's murder confession does not matter is not an exercise of extreme judicial caution.

While the trial court here opined that "the evidence established the defendant's guilt beyond a reasonable doubt, even in the absence of these statements" (Pet. App. 37a n2), there is reason to doubt that the proof could be so neatly segregated. Although involving judges, this situation implicates similar concerns to those the Court has cited for disallowing jurors from deciding a confession's voluntariness. Either situation presents an intolerable risk of cross-contaminating the other proof, even if the factfinder "found the confession involuntary and disregarded it." *Jackson v. Denno*, 378 U.S. 368, 388 (1964). As the Court has queried: "If there are lingering doubts about the sufficiency of the other evidence, does the jury unconsciously lay them to rest by resort to the confession? Will uncertainty about the sufficiency of the other evidence to prove guilt beyond a reasonable doubt actually result in acquittal when the jury knows the defendant has given a truthful confession?" *Id.*

These concerns are not unique to lay jurors. For one thing, case studies have supported a view that judges may not be entirely impervious to the probative impact of "improperly admitted confessions, which are often unreliable and yet inherently over-valued." Alan Hirsch, *Confessions and Harmless Error: A New Argument for the Old Approach*, 12 Berkeley J. Crim. L. 1, 22 (2007). For another thing, the tribunal that avowedly ignored Maharg's alleged hospital confession is the very same tribunal that ruled the confession to be voluntary and admissible.

In general, this Court has "assumed that evidence about the manner in which a confession was secured will often be germane to its probative weight." *Crane*, 476

U.S. at 688. Here, the trial court as gatekeeper found that Maharg's allegedly "spontaneous statements" in the emergency room "were freely and voluntarily made." Pet. App. 80a; *see id.* at 81a ("In the absence of coercive police activity, such unprovoked statements cannot be found to be involuntary."). The same trial court as factfinder would naturally have viewed such a "voluntary" murder confession as reliable and true. After all, "If the defendant is innocent, why did he previously admit his guilt?" *Crane*, 476 U.S. at 689. An appellate court should not take on faith a trial court's assessment of a confession's impact when that same trial court has assigned the confession inflated weight to begin with, especially when the error provides the trial court with a subconscious reason to find the defendant guilty.

Granting the petition would fully respect the notion that "[i]n bench trials, judges routinely hear *inadmissible* evidence that they are presumed to ignore." *Harris v. Rivera*, 454 U.S. 339, 346 (1981) (per curiam) (emphasis added). Learned trial judges presumptively appreciate the reasons for the rules barring consideration of "inadmissible information and will not rely on that information for any improper purpose." *Williams v. Illinois*, 567 U.S. 50, 69 (2012) (plurality op.), *abrogated on other grounds by Smith v. Arizona*, 602 U.S. 779 (2024).

But again, the trial court in this case held the contested confession to be voluntary and admissible. Thus, in this regard, "[t]he fact that this was a bench trial is irrelevant. True, a judge conducting a bench trial can hear evidence that he ultimately determines to be inadmissible without prejudice to his verdict. Here, however, the statement was accepted into evidence, and it was considered to be

relevant and probative, so that the judge had no reason to ignore or discount it as evidence." *Anderson v. Smith*, 751 F.2d 96, 106 (2d Cir. 1984). Indeed, harmless-error review operates on the competing assumption that the factfinder has "considered all the evidence bearing on the issue in question before it made the findings on which the verdict rested." *Yates*, 500 U.S. at 405; *cf. Neder*, 527 U.S. at 16-17 (presuming that jury considered overwhelming evidence of offense element that jury charge omitted). The Court should take the opportunity to evaluate the extent to which a trial court's observations in a bench trial can override that assumption—particularly regarding evidence that the trial court has expressly admitted and credited.

For the administration of justice, the stakes are high. Only when a trial judge perceives a suppression issue as a close call would the judge gratuitously hedge by adding that a verdict could stand without the contested evidence. Yet under the Connecticut Supreme Court's rule, such an observation would neutralize the prospect of appellate reversal: despite the evidence's inherent impact, any error becomes harmless because the trial judge said so. Worse still, the appellate court could avoid deciding the issue's merits to conserve judicial resources, depriving future parties and courts of controlling guidance on the constitutional question.[9]

Raising the stakes further, in this case, the second confession flowed from what the concurring opinion aptly described as a "shockingly disturbing" overnight

9. *But see Lockhart v. Fretwell*, 506 U.S. 364, 370 n.2 (1993) ("Harmless-error analysis is triggered only *after* the reviewing court discovers that an error has been committed.").

interrogation, lasting "for approximately *thirteen hours*, while the defendant was clearly in the dangerous throes of alcohol withdrawal." Pet. App. 22a. As that opinion recounted: "It was only after the defendant began experiencing a seizure and became 'cyanotic' that the ordeal finally came to an end and an ambulance was called. By placing the defendant in serious medical jeopardy, the officers' treatment of the defendant can only be described as recklessly indifferent." *Id.* at 25a. Even the majority's opinion labeled the interrogation "disturbing." *Id.* at 8a n.8.

Despite all this, the State Supreme Court took a shortcut to harmless error that obviated any need to address whether the alleged hospital confession should have been suppressed as involuntary. Such a double bypass in no way furthers a State's "legitimate interest in reducing the workload of its judiciary." *Halbert v. Michigan*, 545 U.S. 605, 623 (2005). Nor will it realistically deter law-enforcement officers from testing limits in the zeal to solve crimes, when trial courts will remain free to admit, consider, and then immunize any evidence extracted. Although conditions may be placed on a defendant's waiving the fundamental right to a jury trial, *Singer v. United States*, 380 U.S. 24, 36 (1965), impliedly forfeiting suppression or appellate rights should not be among them. For these reasons as well, the Court should grant review to restore regularity to harmless-error review in bench trials.

III. The Connecticut Supreme Court's Harmlessness Determination Was Demonstrably Wrong.

This case is also worthy of review because the Connecticut Supreme Court's harmlessness determination

is patently incorrect. That is so with or without the trial court's footnoted disclaimer—which had no proper place in a judicial finding of guilt, let alone in a conclusion of harmless error.

In arguing to the Connecticut Supreme Court that the suppression error would have been harmless, the State pointed exclusively to the footnote, to which the appellate court deferred. Pet. App. 18a-21a. Both were misguided. After admitting and crediting a state trooper's testimony that Maharg had exclaimed, "I murdered Tom," the trial court convicted Maharg of having done just that, basing this verdict "upon the evidence presented." *Id.* at 49a, 52a.

Nestled in the decision's findings of fact, the trial court *also* "concluded that the evidence established the defendant's guilt beyond a reasonable doubt, even in the absence of" the confession. *Id.* at 37a n.2. But that observation did *not* say (nor could it say) that the trial court ignored the alleged murder confession in rendering judgment—which the trial court *did* say when addressing the stationhouse statements that had been suppressed. *See id.* at 37a n.1. The footnote itself fails to exclude the "reasonable possibility that the evidence complained of might have contributed to the conviction." *Chapman*, 386 U.S. at 24 (quotation marks omitted). At most, "'no one can say what credit and weight'" the factfinder assigned the confession. *Fulminante*, 499 U.S. at 308 (quoting *Payne*, 356 U.S. at 568).

The unspecified other "evidence" to which the footnote referred did not eclipse the putative murder confession to such a degree as to render it "unimportant in relation to everything else." *Yates*, 500 U.S. at 403. Not

in a prosecution for murder, during which the prosecutor herself confessed that "we may never know exactly what happened on" the night in question. Trial Tr. (11/02/23) at 60.

Unlike other species of homicide, the commission of murder requires "intent to cause the death of another person." Conn. Gen. Stat. § 53a-54a(a). Establishing intent was an uphill climb in a case with no eyewitness testimony, surveillance video, or alleged weapon (an axe and hatchet found on the property both tested negative for blood). So much so that the *State*—over a defense objection—successfully implored the trial court also to consider the lesser included offense of first-degree manslaughter, with a lesser mens rea. *See id.* § 53a-55; *see also* Trial Tr. (11/02/23) at 12-14.

Under the well-established standard, in granting that request, the trial court necessarily determined that the evidence was "sufficiently in dispute to permit [it] consistently to find the defendant not guilty of murder but guilty of manslaughter." *State v. Iverson*, 352 Conn. 422, 429 (2025); *see also State v. Tomlin*, 266 Conn. 608, 634 (2003); *State v. Rasmussen*, 225 Conn. 55, 67-68 (1993). In general, a charge of manslaughter as a lesser included offense will be *unavailable* where the State has "unquestionably presented overwhelming evidence that the defendant had intended to kill the victim," including via "the nature and extent of the victim's injuries." *Iverson*, 352 Conn. at 430. In this case, the State thus maintained, and the trial court accepted, that even *with* the alleged murder confession, the proof "suggest[ed] at least a possibility that the defendant acted with a lesser intent than that of the specific intent to kill." *Tomlin*, 266 Conn.

at 632 (quotation marks omitted). There had to have been at least a reasonable possibility that admitting Maharg's alleged murder confession contributed to Maharg's murder conviction. *See Chapman*, 386 U.S. at 24; *cf. Neder*, 527 U.S. at 18-19 (holding that error respecting element of crime will be prejudicial under *Chapman* if reasonable factfinder could have resolved element in either direction).

It is no wonder that, on appeal, the State focused on the trial court's footnote, rather than assert that the confession objectively made no difference to guilt. At trial, the prosecutor insisted that Maharg's statements "about how he murdered" his spouse were "incredibly probative" of his "intent to kill his husband." Trial Tr. (10/14/23) at 91; *see id.* ("This is a murder case, Your Honor."). The prosecutor then insisted that "this defendant intended, based on his own statements," to kill his spouse. Trial Tr. (10/20/23) at 83. Grasping at straws, the prosecutor alternatively urged the trial court to convict Maharg of murder for allegedly failing to render aid to his injured spouse—but the court would not let the "obligation to act for a spousal partner basically take the place of and/or negate the issue of specific intent." Trial Tr. (11/02/23) at 15. The prosecutor further told the court that "[o]f course" the forensic experts should have considered the murder confession when interpreting the decedent's injuries. Trial Tr. (10/31/23) at 71.

On that point, as the concurring State Justices observed, the idea that Maharg had murdered his husband with a sharp-edged weapon—which the State's autopsy finding purported to confirm, and which was central to the trial court's finding of guilt—"was never supported by any physical evidence." Pet. App. 24a. *See supra* at 8

(describing witnesses' basic agreement as to injuries' surface-level nature and blunt-force characteristics). This Court should grant review given the state court's obvious error in holding the second confession's admission to be harmless. *See Yates*, 500 U.S. at 407-11 (concluding that use of prohibited presumption on intent was prejudicial error in state murder trial in which proof of defendant's alleged intent was unclear).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Eric Del Pozo
Counsel of Record
Joette Katz
Shipman & Goodwin LLP
One Constitution Plaza
Hartford, CT 06103
(860) 251-5332
edelpozo@goodwin.com

Counsel for the Petitioner

APPENDIX

TABLE OF APPENDICES

APPENDIX A — OPINION OF THE SUPREME COURT OF CONNECTICUT, FILED JULY 8, 2025

SUPREME COURT OF CONNECTICUT

SC 20855

STATE OF CONNECTICUT

v.

JAMES MAHARG

Filed July 8, 2025

OPINION

MULLINS, C. J. Following a bench trial before a three judge panel, the defendant, James Maharg, was found guilty of murdering his husband, Thomas Conley, in violation of General Statutes § 53a-54a(a). In connection with the murder, the trial court also found him guilty of tampering with or fabricating physical evidence in violation of General Statutes § 53a-155. On appeal, the defendant raises two claims, challenging only his murder conviction. The defendant does not challenge his conviction of tampering with or fabricating physical evidence.

First, the defendant claims on appeal that he was deprived of his federal and state constitutional rights to due process and against self-incrimination because, notwithstanding the fact that the trial court properly suppressed statements he had made during an almost thirteen hour police interrogation, including his confession

that he murdered Conley with a hatchet,[1] the prosecutor and the court extensively relied on those statements in bringing about his conviction of murder. He further asserts that the three experts who testified at trial relied on an investigative report by the Office of the Chief Medical Examiner (OCME report) that referred to the suppressed confession to develop their expert reports and findings, rendering the defendant's trial fundamentally unfair.

Second, the defendant claims that the trial court erred in admitting statements he had made while in the emergency room, in which he confessed to the murder. He argues that, because those statements were made shortly after, and were a product of, his earlier, involuntary confession, the taint from that earlier confession carried over and rendered his hospital confession equally involuntary and violative of due process. We reject both claims. Accordingly, we affirm the judgment of the trial court.

The trial court found, or reasonably could have found, the following facts. On March 20, 2019, at approximately 2 a.m., the defendant frantically called 911, and, after he was connected to a dispatcher, he yelled: "My husband is

---

1. The police discovered both a hatchet and an axe during a sweep of the defendant's property. Although the defendant, during the police interrogation, confessed to murdering Conley with the "hatchet" and clarified that he probably would not have used "the axe because [it was] difficult to get to," some of the subsequent investigatory reports and expert testimony indicated that the instrument in question was an axe.

dead! My husband is dead!" The defendant relayed the following story to the dispatcher. He explained that he and Conley had been drinking a great deal throughout the day[2] and that, at some point during the evening, Conley fell and hit his head on the kitchen cabinet and started to bleed heavily. The defendant said that he tended to Conley's gash by stopping the bleeding with a roll of paper towels and that he brought Conley upstairs to bed.[3] The defendant told the dispatcher that he had just awoken and had found Conley at the bottom of the stairs. When the dispatcher asked the defendant if Conley was "beyond help," the defendant responded, "yes . . . he's cold as a rock." While rapidly panting, the defendant, unprompted, began talking about the couple's financial problems and frequent drinking.

Approximately twenty minutes later, a paramedic, Justin Walsh, arrived at the defendant's residence. After the defendant secured his dogs to let Walsh in, he entered the house and noticed Conley's naked body lying in an unnatural position, at the bottom of the stairs. Walsh examined Conley and determined that he was deceased. During the examination, Walsh noticed large and small wounds that were filled with clotted blood on the top of Conley's head. Based on the clotting, Walsh believed

---

2. The defendant's blood alcohol concentration was not tested. Conley's postmortem blood alcohol concentration was recorded at 0.393 in the toxicology report. An associate medical examiner testified that this amount would be considered an elevated level for a chronic alcohol user.

3. The defendant did not immediately call 911.

that the wounds were not fresh. Despite the visible head wounds, there was no noticeable blood on Conley's body or on the surrounding floor. Walsh noted that Conley's body was stiffened by rigor mortis and was cold, which indicated that Conley had been dead for several hours. The defendant told Walsh the same version of events that he had told to the dispatcher.[4]

Shortly thereafter, Troopers Isaiah Gonzalez and Laurence Gregg arrived on the scene. When Gregg arrived on the scene, he audio-recorded his interaction with the defendant, who can be heard admitting that there was no one else in the house but him, Conley, and their dogs. At approximately 4 a.m., Gonzalez transported the defendant to the State Police Troop A barracks in Southbury. Initially, Gonzalez and Detective Jared Barbero interviewed the defendant for approximately one hour at the police station. Then, Detective Ed Vayan joined Barbero, and, together, they interviewed the defendant for an additional twelve hours. The interview was video-recorded. On multiple occasions during the lengthy interview, the defendant asked Barbero and Vayan to terminate the interview, a request that was not heeded by the detectives. The defendant also appeared to be visibly shaking, and Barbero noted that he could "see the withdrawal all over [the defendant]."

---

4. The defendant explained to Walsh that Conley had fallen, injuring himself earlier in the night. He told Walsh that he had helped get Conley upstairs to bed before they had both passed out. Then, sometime later, he woke up to hearing Conley fall down the stairs. When he went downstairs and found Conley at the base of the stairs, that is when he called 911.

Appendix A

After being advised of his *Miranda* rights,[5] the defendant signed his name on the waiver form. Barbero and Vayan commented on the defendant's unusual level of shaking that made it difficult for him to even scrawl his name on the form. Toward the end of the interview, the defendant verbally confessed to killing Conley with a hatchet.[6] During the nearly thirteen hour interrogation, the defendant vomited numerous times. Finally, after the defendant had an apparent seizure, at approximately 5 p.m., he was transported to Waterbury Hospital for alcohol withdrawal treatment. Trooper Matthew Geddes accompanied him.

Once at the hospital, Geddes remained in the hallway outside of the defendant's room, approximately seven to ten feet away from the defendant. About two hours after arriving, the defendant woke up and, unprompted, asked, "where is my husband?" Geddes logged the comment, as required by police policy, but did not acknowledge or respond to the defendant. Thirty minutes later, the defendant declared: "[M]y life is ruined. I murdered [Conley]. How do I tell people I killed my husband?" Once again, Geddes logged the comment and did not respond. The next day, while still in the hospital, the defendant requested to speak with Barbero. In the recorded interview, the defendant admitted to pushing Conley into

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

6. As we noted in this opinion, the defendant filed a motion to suppress, which the trial court granted only with respect to this confession.

a kitchen cabinet but denied bludgeoning him. Shortly thereafter, the police arrested the defendant and charged him with murder and tampering with or fabricating physical evidence.

Meanwhile, investigation of the crime scene revealed a different story from the one narrated by the defendant. At the scene, Detective Jamie Pearston recovered a bloodstained robe in the living room that Conley likely wore at some point during that evening. Additionally, Detective Jeremy Combes photographed three elliptically shaped bloodstains that were deposited in a downward direction in the kitchen. There was also a large bloodstain on the kitchen floor, which, the investigators determined, was where the first bloodshed event occurred.

Furthermore, despite the defendant's saying that he stopped Conley's bleeding before bringing him up to bed, there was a significant amount of blood upstairs. There were saturation stains on the bed and the pillows in both bedrooms. "[S]patter stains," as well as "small, circular stains," caused by "blood drops that are released from an object in motion," were also found near the north bathroom doorway. The investigators determined that the numerous bloodstains upstairs indicated that there was a second event that resulted in bloodshed, contrary to the defendant's story. However, the investigators could not pinpoint the exact location in the upstairs portion of the house where the second bloodshed event had occurred.

Before trial, the defendant filed a motion to suppress the recorded verbal confessions that he had made during

the thirteen hour station house interview (station house confession) and the statements overheard by Geddes at the hospital (hospital confession).[7] He claimed that the police had violated his constitutional rights under both the federal and state constitutions. The trial court held a hearing on this motion during the trial to avoid the duplicative questioning and cross-examination of the relevant witnesses. The trial court ultimately made two oral rulings on the defendant's motion to suppress, granting it in part and denying it in part. Before the defense presented its case, the trial court issued a written opinion, which articulated in greater detail the grounds for its oral rulings on the motion to suppress and the facts that it relied on in reaching its conclusions.

Specifically, the trial court suppressed the statements the defendant had made during the station house confession. The court concluded that the statements were not voluntarily made. In support of its decision, the court relied on the failure of the detectives, Barbero and Vayan, to honor the defendant's repeated requests to terminate the interview and to ensure that he understood the *Miranda* warnings. The court also determined that Barbero and Vayan disregarded the defendant's urgent need for medical care, even though the defendant showed obvious signs of physical distress.[8] The court, however,

---

7. The defendant did not seek to suppress the statement he gave to Barbero at the hospital.

8. The trial court found that "Barbero and Vayan talked about the defendant's need to sober up and observed the defendant shaking to the point that he could neither hold a cup of coffee steady

denied the defendant's motion to suppress the hospital confession on the ground that that confession was admissible because it was spontaneous and freely made.

At the conclusion of the trial, the trial court found the defendant guilty of murder and tampering with or fabricating physical evidence.[9] In its written memorandum of decision, the court found "that the defendant used a

---

nor legibly sign his own name [on] the *Miranda* form." The court noted that, during the interview, Barbero commented that he could "see the withdrawal all over [the defendant]." (Internal quotation marks omitted.) Ultimately, the court determined that "Barbero and Vayan disregarded the defendant's obvious and increasingly urgent need for medical care." At trial, Barbero testified that state police policy requires bringing a suspect exhibiting signs of alcohol withdrawal to a nearby medical facility. Given the disturbing facts of this interrogation, we are dismayed at the failure of the police officers to follow that policy and to obtain medical care for the defendant in a more expedient manner.

9. The conviction of tampering with or fabricating physical evidence was based on the fact that the trial court found beyond a reasonable doubt that the defendant had "tampered with the crime scene [by] attempting to remove blood from the kitchen floor, [from] the upper landing of the stairs, and from [Conley's] head and body," and that the defendant had moved Conley's body to the bottom of the stairs, "as evidenced by the facts that (1) there was no blood under [Conley's] body, showing that he did not die in that location, (2) [Conley's] leg was stiff and raised off the ground, showing that the defendant [had] moved his body to that location after [Conley] was already in a state of rigor [mortis], and (3) [Conley] had lividity on the posterior of his body, indicating that he was on his back after death, rather than on his stomach, as he was found when the police arrived."

weighted and sharp object to repeatedly bludgeon [Conley] over the head, a vital area of the body." Furthermore, the court reasoned that the fact that the defendant had the ability to call for help but failed to summon treatment for a grievous wound "is consistent with an antecedent intent to cause death." (Internal quotation marks omitted.) The court also found that the defendant had attempted to stage the scene to make it appear as if Conley had fallen down the stairs. The court concluded that "[t]he cumulative force of the defendant's actions and inactions supports the inference that the defendant had the requisite intent to kill [Conley]. This includes, but is not limited to, the evidence that the defendant (1) used a sharp-edged weapon to inflict [Conley's] injuries, which caused substantial blood loss, (2) failed to seek medical help while [Conley] bled out, (3) dragged [Conley's] body, and (4) lied to the 911 dispatcher, the paramedic, and the responding police officers regarding the cause of [Conley's] injuries."

Lastly, the trial court noted that, even though it did not suppress the hospital confession, the evidence established the defendant's guilt beyond a reasonable doubt even without that confession. The court sentenced the defendant to a total effective sentence of thirty-five years of imprisonment, followed by ten years of special parole. This appeal followed.

I

The defendant asserts that, even though the trial court properly suppressed his station house confession, the state "extensively relied on its tainted fruits in

bringing about [the defendant's] conviction [of] murder." The defendant claims that this deprived him of a fair trial, as guaranteed by the due process clauses of both the federal and state constitutions, and of his federal and state constitutional rights against self-incrimination. Specifically, the defendant points to the testimony of three witnesses as being improperly tainted by the suppressed station house confession, namely, Jacqueline Nunez, an associate medical examiner; Trooper Mark Davison, an expert in bloodstain pattern analysis; and the defendant's own expert, Mark Taff, a forensic pathologist.

At trial, although the defendant filed a motion to suppress the station house confession, he made no claim that the confession affected other parts of the trial or the previously mentioned expert witnesses. The defendant's failure to raise this claim renders it unpreserved.[10] Given

10. The defendant contends that, after being found guilty but before sentencing, he personally raised the claim that, even though the trial court properly suppressed the station house confession, that confession nevertheless affected his right to a fair trial because the prosecutor and the trial court extensively relied on it to bring about his murder conviction. We note that the defendant was still represented by counsel at that time, and his counsel did not raise this claim to the trial court. In fact, the court, through the panel's presiding judge, explained to the defendant that he "need[ed] to address that with [his] attorney and [that] there [were] appropriate ways for [him] to address that exact issue . . . ." The presiding judge was "certain that [defense counsel would] advise [him] as to how to do that." Indeed, the judge further explained to the defendant that his counsel could pursue the claim in a motion for a new trial. Thereafter, defense counsel moved for a new trial but did not pursue the claim that the defendant now raises on appeal. As a result, this claim was not preserved.

the constitutional nature of the claim, however, we will employ our familiar *Golding* analysis to address his unpreserved claim. See *State* v. *Golding*, 213 Conn. 233, 239–40, 567 A.2d 823 (1989); see also *In re Yasiel R.*, 317 Conn. 773, 781, 120 A.3d 1188 (2015) (modifying third prong of *Golding*).[11] In doing so, we conclude that the defendant's claim fails under *Golding*'s first prong because the record is not adequate for review.

In the present case, the defendant asserts that the testimony of Nunez, Davison, and Taff was tainted by the suppressed station house confession. Particularly, the defendant claims that each of these witnesses developed his or her opinion based in part on the OCME report, which referred to the suppressed confession. To sustain the validity of his claim, the defendant would need to demonstrate that these witnesses knew of and had reviewed the OCME report in reaching their conclusions about which they testified and that the references to the station house confession contained in the OCME report affected each expert's conclusion. We reject the defendant's *Golding* claim because the record is not adequate for this purpose. We address this issue with respect to each expert in turn.

---

11. A defendant may prevail on an unpreserved claim under *Golding* when "(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." (Footnote omitted.) *State* v. *Golding*, supra, 213 Conn. 239–40; see *In re Yasiel R.*, supra, 317 Conn. 781.

Appendix A

A

At trial, Nunez testified that she performed an autopsy on Conley on March 21, 2019. Nunez also testified that, as a result of the autopsy, she concluded that the cause of Conley's death was "chop wounds of the head," the mechanism of his death was exsanguination (loss of blood), and the manner of his death was homicide. She also testified about Conley's death certificate, which she signed on March 21, 2019. Under the first prong of *Golding*, in order for this court to consider the defendant's claim, the record must contain sufficient facts for this court to determine whether Nunez had read the OCME report before completing the autopsy and whether that report had influenced the results of the autopsy report or the death certificate. The record is devoid of such evidence.

Nunez testified that, prior to conducting the autopsy on Conley, she had received "some of the preliminary investigative information." She also testified that she could recall only that "there was a concern because of statements that had been made [by the defendant] at the scene and . . . [that the scene] was treated as suspicious from the beginning." Nunez further testified that she did not remember whether she had been informed that the police had found an axe during their sweep of the property. Notably, Nunez testified that she was not sure whether she had reviewed the OCME report prior to conducting the autopsy on Conley, but she implied that it was unlikely because the OCME report was certified one week *after* she had conducted the autopsy. Therefore, the record is inadequate for us to determine whether Nunez

possessed a copy of the OCME report when she conducted the autopsy, let alone to consider whether that report influenced the findings contained in the autopsy report or the death certificate.

The defendant asserts that there was evidence that Nunez necessarily had reviewed the OCME report prior to conducting the autopsy because she testified that she had received "preliminary information" from the medical investigator and because General Statutes § 19a-406 (b)[12] requires the Office of the Chief Medical Examiner "to perform autopsies in connection with the investigation" of certain deaths. We disagree. There is no requirement in § 19a-406 that the person conducting the autopsy review the OCME report prior to conducting the autopsy. Rather, § 19a-406 (a) prescribes the types of deaths that the chief medical examiner must investigate, identifies the individuals who may perform or request an autopsy, and requires that "[t]he findings of the investigation at the scene of death" and the autopsy "be filed in the Office of the Chief Medical Examiner." More definitively, Nunez testified that she did not know if she was in possession of a copy of the OCME report when she performed the autopsy on Conley and completed his death certificate. Therefore, even if this court were to consider the requirements of § 19a-406, they do not provide the necessary factual record to review the defendant's claim.

---

12. Although § 19a-406 was amended during a special session in July, 2020; see Public Acts, Spec. Sess., July, 2020, No. 20-1, § 36; that amendment has no bearing on the merits of this appeal. In the interest of simplicity, we refer to the current revision of the statute.

Simply put, the defendant did not establish a factual basis for this court to determine whether Nunez reviewed the OCME report before conducting the autopsy and whether her findings and testimony were influenced by the references to the station house confession contained in the OCME report. "If the facts revealed by the record are insufficient, unclear or ambiguous as to whether a constitutional violation has occurred, [this court] will not attempt to supplement or reconstruct the record, or to make factual determinations, in order to decide the defendant's claim." *State* v. *Golding*, supra, 213 Conn. 240. Accordingly, we conclude that the evidence is not sufficient to review the defendant's claim regarding Nunez.

B

Similarly, the record is inadequate to review the defendant's claim regarding Davison. Davison testified first about the general methodology for performing bloodstain pattern analysis and the limitations of that analysis. He explained that he had reviewed crime scene photographs and reports, and that he had inspected some of the other items of evidence in reaching his conclusions. Ultimately, Davison testified about utilizing the photographs to determine where bloodstains were found throughout the house and described the various bloodstain definitions and what they may indicate. He did not testify about the cause of Conley's death, who caused Conley's death, who moved Conley, who altered the bloodstains, or what instrument caused the stains.

On direct examination, Davison testified that he had a copy of the OCME report in his possession when he

prepared his own report, but he was not asked whether the OCME report impacted his findings. Davison explained that he reached his conclusions based on an analysis of "the scene . . . ." Defense counsel also did not question him as to whether the OCME report influenced his report. Rather, defense counsel's cross-examination focused on the possibility that the transfer stains had been caused by the dogs, insofar as they may have walked through or licked up the blood.

Moreover, Davison, in his findings, did not refer to the OCME report in general or to the references to the station house confession contained therein, and there is nothing in the record to demonstrate what impact, if any, the suppressed statements had on his findings.[13] Indeed, given the scientific nature of Davison's testimony and the fact that he did not reach a conclusion about the cause or manner of Conley's death, there is no record to credit the defendant's speculative claim that Davison's testimony was improperly tainted by the station house confession.

C

The defendant also claims that Taff's testimony was tainted by the station house confession because the prosecutor referred to it in her cross-examination of Taff and in her closing argument. In response, the state

13. To the extent the defendant points to the fact that Davison testified that he had a copy of "Barbero's interrogation report," the record is also inadequate to review that claim. This is because it is unclear from the record what was contained in Barbero's report, as the report was not entered into evidence at trial.

asserts that the prosecutor did not taint Taff's testimony by referencing the station house confession and that, to the contrary, Taff spontaneously mentioned the OCME report during his testimony because it was defense counsel, not the prosecutor, who had provided the OCME report to Taff, the defense's own expert witness, whom defense counsel called to challenge Nunez' conclusions.

Our review of the record confirms that the prosecutor did not question Taff about the defendant's station house confession. On cross-examination, the prosecutor asked Taff if he knew about the defendant's hospital confession, which had not been suppressed. The prosecutor asked, "[a]re you aware that [the] defendant admitted to the police that 'my life is ruined, I murdered [Conley], how do I tell people I killed my husband?'" The language of the prosecutor's question was a verbatim recitation of the defendant's unsuppressed hospital confession, in which the defendant said: "[M]y life is ruined. I murdered [Conley]. How do I tell people I killed my husband?" To the extent that there is any ambiguity about whether the defendant thought that the prosecutor's use of the phrase "admitted to the police" referred to the suppressed station house confession, the record is inadequate on this point.

It was Taff who referenced the OCME report, by stating that he "remember[ed] [the defendant] making some incriminating statements about . . . using an axe . . . in the [OCME] report . . . ." Taff then testified that he took the OCME report into consideration when conducting his analysis, but he failed to explain how the report affected his conclusions. The prosecutor followed up by asking

Taff, "and yet . . . you're still here, and you're indicating that it's accident by suicide?" Taff responded: "I said that this could be an accident because it could be self-injurious, self-inflicted types of injuries. I did not call this a clear-cut suicide." At no point, however, did either the prosecutor or Taff expressly refer to the station house confession. More important, Taff never suggested that the suppressed statement influenced his opinion. Under these circumstances, the record is inadequate to review the defendant's unpreserved claim that the station house confession tainted Taff's testimony.

The defendant also claims that the prosecutor, during her closing argument, improperly referenced Taff's allegedly tainted testimony. We reject this claim because the prosecutor, during her closing argument, did not refer to the station house confession but, instead, merely argued that Taff had not reviewed the "statements from the defendant," which we take as a reference to the unsuppressed hospital confession or to the unchallenged statement that the defendant had given to Barbero while at the hospital. Thus, the record is devoid of evidence to establish the factual predicate for the defendant's claim—that the prosecutor referred to the station house confession—and the claim is, therefore, unreviewable.

To summarize, we conclude that the defendant's claims regarding the suppressed station house confession fail the first prong of *Golding* and are unreviewable.[14]

14. To the extent the defendant raises a general claim that his constitutional rights were violated because the trial court failed to step in to prevent the use of the station house confession,

II

The defendant claims that the admission into evidence of the hospital confession violated his right to due process because the statements were a product of the thirteen hour station house interrogation and confession. In response, the state contends that, even if we assume that evidence of the hospital confession was improperly admitted, the state has established beyond a reasonable doubt that any impropriety was harmless. Specifically, the state asserts that any error was harmless because, in its memorandum of decision, the trial court explained that, even if it did not consider the hospital confession, the other evidence established the defendant's guilt beyond a reasonable doubt.[15] We agree with the state.

---

even though the statements the defendant had made during the confession had "spread like wildfire into nearly all other material aspects of this case," even beyond the three witnesses he has identified, we conclude that the claim is inadequately briefed. Other than the testimony of the three witnesses that we have addressed in this opinion, the defendant does not point to any specific aspect of the trial that was impacted by his station house confession. Accordingly, we decline to review this general claim.

15. In his reply brief, the defendant asserts that this court cannot rely on the trial court's observation regarding the defendant's hospital confession to conclude that its admission into evidence was harmless because, as this court recently noted in *State* v. *Alexander*, 343 Conn. 495, 507 n.10, 275 A.3d 199 (2022), the question of harmlessness is "reserved to 'an appellate court applying the correct standard of review,'" and this court may not speculate as to the degree of influence an objectionable finding had on a final result.

We reiterate, as we did in *State* v. *Alexande*r, supra, 343 Conn. 510, that the trial court's comment regarding the impact of

"In conducting a harmless error analysis, the dispositive issue is 'the impact of the [allegedly improperly admitted] evidence on the trier of fact and the result of the trial.'" *State* v. *Alexander*, 343 Conn. 495, 507, 275 A.3d 199 (2022), quoting *State* v. *Armadore*, 338 Conn. 407, 437, 258 A.3d 601 (2021). We have concluded that, when the case is "tried to a court, not a jury . . . our harmless error analysis is facilitated substantially by the express findings contained in the memorandum of decision by which the [trial court] returned [its] ultimate finding of guilt." *State* v. *Alexander*, supra, 506; see, e.g., *Ghiroli* v. *Ghiroli*, 184 Conn. 406, 408, 439 A.2d 1024 (1981) (recognizing that trial court's explanation that contested evidence "'was not considered by [the court]'" refuted plaintiff's claim of error); see also, e.g., *State* v. *Velazquez*, 197 Conn. App. 754, 762–63, 231 A.3d 1269 (2020) ("[D]uring the trial, the [trial] court stated that it did not '[find] the testimony that the car smelled of marijuana . . . to be that material [to] the case' . . . [and that] it was not drawing the conclusion that the defendant had been smoking marijuana . . . . [Therefore, the Appellate Court] conclude[d] that any error was harmless.").

---

the defendant's hospital confession is not the same as a finding of harmlessness by this court. However, the trial court's observation is strong evidence of the impact the hospital confession had on it, as the fact finder, and we can use that evidence in reaching our conclusion that the state has established beyond a reasonable doubt that any impropriety was harmless. See id. ("[t]he [trial court's] 'insistent remarks' that the defendant's 'statements had no effect on [its] decision[s]' reinforce[d] [this court's] confidence in [its] own conclusion that the [improperly admitted evidence] had no impact on the guilty findings at issue").

Upon reviewing the trial court's findings in the present case in the context of the entire record, we conclude that the defendant's hospital confession did not materially impact the court or the result of the trial. The trial court did not rely on the hospital confession in reaching its conclusions. Indeed, in its memorandum of decision, the court explained that it "did not suppress the spontaneous statements the defendant made within Geddes' earshot because they were neither made in response to police interrogation nor the result of coercive police conduct. Nonetheless, the [court] unanimously concluded that the evidence established the defendant's guilt beyond a reasonable doubt, even in the absence of these statements."

The trial court found that the defendant's story was not credible, and it based its finding on the forensic evidence presented at trial. On the basis of this evidence, the court determined that the bloodstain evidence showed that "the assault on [Conley] was not [caused by] a single blow. . . . Notwithstanding [Conley's] unmistakable need for immediate medical intervention, the defendant failed to call for help, despite the evidence that the defendant had the ability to make a call . . . ." The court also found that none of the defendant's explanations "to the 911 operator, [to] the paramedic, and to the responding [police] officers . . . [is] supported by the evidence [because] . . . [b]oth . . . Taff and . . . Nunez agree[d] that [Conley's] injuries were not the result of a fall." (Footnote omitted.) Lastly, the court considered Taff's "alternative scenarios," but it did not credit his theory that Conley's wounds were self-inflicted due to the "location, number, and severity of the . . . wounds . . . ."

Accordingly, after conducting our own independent, scrupulous review of the record, we conclude that, even if the trial court improperly admitted the defendant's hospital confession, any alleged error was harmless because the court would have found the defendant guilty beyond a reasonable doubt in the absence of the hospital confession. See, e.g., *United States* v. *Miller*, 800 F.2d 129, 136 (7th Cir. 1986) ("[t]he trial court specifically stated it would disregard the disputed evidence from its evaluation of [the] defendant's guilt, and despite any court's 'many human [frailties],' we must take that statement as true").

The judgment is affirmed.

In this opinion the other justices concurred.

McDONALD, J., with whom D'AURIA and ECKER, Js., join, concurring. This is a textbook case that demonstrates, in both dramatic and dangerous fashion, what can go wrong when the police improperly conduct an interview of a suspect. Although I agree with the majority that the judgment of conviction should be affirmed and join its opinion, I write separately to highlight the deeply troubling—perhaps even reckless—manner in which state police officers conducted the interrogation of the defendant, James Maharg, while he was in a seriously compromised medical state as a result of long-term alcohol abuse.[1] The actions of these officers seriously endangered the defendant's physical health, violated both the defendant's constitutional rights and state police policy, and needlessly jeopardized the integrity of the investigation and the ensuing prosecution of this case, all of which undermined the ends of justice.

I begin by emphasizing the shockingly disturbing circumstances under which the state police conducted the defendant's interrogation, for approximately *thirteen hours*, while the defendant was clearly in the dangerous throes of alcohol withdrawal. Trooper Isaiah Gonzalez responded to the defendant's house around 2:20 a.m., following the defendant's 911 call reporting that the defendant found the victim, the defendant's husband, Thomas Conley, lying on the floor "dead" after having hit his head on a kitchen cabinet earlier that evening. As the trial court noted, at that time, "the defendant made

1. The defendant was convicted of murder in violation of General Statutes § 53a-54a (a) and tampering with or fabricating physical evidence in violation of General Statutes § 53a-155. On appeal, the defendant does not challenge his conviction of tampering with or fabricating physical evidence.

several spontaneous statements in [Gonzalez'] presence, including that he and the [victim] ha[d] been drinking a lot since they lost their business and that they had been drinking earlier that evening." At the scene, police officers observed "alcohol bottles" on the kitchen counter, noting that "[s]ome [of the bottles] were empty, [and] some were not." At approximately 4 a.m., the defendant was transported to State Police Troop A barracks in Southbury. As the trial court found, during the first hour of the interrogation at the police station, Gonzalez and Detective Jared Barbero discussed, among other things, "the fact that the defendant had consumed a significant amount of alcohol the prior evening."

Barbero and another detective, Ed Vayan, proceeded to interrogate the defendant for another approximately twelve hours, despite the defendant's repeated requests to terminate the interview. To compound the disturbing nature of the interrogation, the police officers continued the interrogation even though the defendant was visibly shaking, and they acknowledged that the defendant was exhibiting signs of alcohol withdrawal. The defendant's shaking was so intense that he was unable to sign his name on the *Miranda* notice form to purportedly "certif[y]" that he had been "advised" of his constitutional rights. Instead, at Vayan's direction, the defendant was told to "just make [his] mark" on the form. As witnessed by Barbero and Vayan, this is the "mark" of the defendant:

It is hard to imagine that, given the defendant's condition, he was able to meaningfully understand the constitutional rights the police purportedly advised him of, much less that he understood how to meaningfully exercise them. For hours during the intensely suggestive interrogation, in addition to violently shaking, the defendant vomited numerous times and repeatedly denied having killed the victim. Ultimately, the defendant acceded to the officers' suggested narrative that he had used a hatchet to murder the victim—which was never supported by any physical evidence—and thus confessed to killing the victim. It was not until approximately thirteen hours into the interrogation, after the defendant had a seizure, that the defendant was transported to a hospital for alcohol withdrawal treatment. Under these extraordinary circumstances, I am hard-pressed to understand why the state did not readily acknowledge, at oral argument before this court, that the police interrogation in this case was inexcusable and violated the defendant's constitutional rights, as the three judge trial court determined when it granted the defendant's motion to suppress with respect to the entire thirteen hour interview.

To be clear, the state police seriously endangered the defendant's health by ignoring his obvious signs of physical distress and urgent need for medical treatment. As the trial court found, "[f]rom the outset of the interview, both Barbero and Vayan understood that the defendant had been drinking very heavily at the time of the incident. Barbero and Vayan talked about the defendant's need to sober up and observed the defendant shaking to the point that he could neither hold a cup of coffee steady nor legibly

sign his own name [on] the *Miranda* form." A few hours into the interview, the defendant pleaded with Barbero and Vayan that he "need[ed] a drink so bad." In response, Barbero stated, "[y]eah, I can see the withdrawal all over you." The defendant made additional pleas of, "[o]h my God, I need a drink so bad," and "I can't stand it, I can't stand this shaking." The trial court found that, instead of seeking immediate medical assistance, "[t]he detectives responded by putting the defendant in a cell." The defendant was then brought back into the interview room, at which point he told the police officers, "I need to go to the hospital to get off this, and I need detox." The defendant subsequently stated, "I need help." Vayan responded, "I know you do," and, notwithstanding that acknowledgment, he and Barbero proceeded to continue questioning the defendant. It was only after the defendant began experiencing a seizure and became "cyanotic"[2] that the ordeal finally came to an end and an ambulance was called. By placing the defendant in serious medical jeopardy, the officers' treatment of the defendant can only be described as recklessly indifferent.[3]

---

2. When paramedics arrived, Barbero told them that the defendant was in "[a]lcohol withdrawal" and that he went "cyanotic," which, as the trial court explained, indicated "that his skin had turned a bluish color." See Merriam-Webster's Collegiate Dictionary (11th Ed. 2014) p. 310 (defining "cyanosis" as "a bluish or purplish discoloration (as of skin) due to deficient oxygenation of the blood").

3. "[A]cute alcohol withdrawal . . . can cause significant illness and death. Some patients experience seizures, which may increase in severity with subsequent [alcohol withdrawal] episodes. Another potential [alcohol withdrawal] complication is delirium

Even putting aside the indifferent nature of law enforcement's treatment of the defendant, the officers' actions needlessly jeopardized the integrity of the investigation and subsequent prosecution of the defendant. Moreover, Barbero testified that state police policy required that state police officers bring a suspect exhibiting signs of alcohol withdrawal to a medical facility Barbero and Vayan clearly did not abide by that policy, and, when asked at oral argument whether those officers were ever disciplined for that violation, the state responded, "I do not know." In a case such as this, the state would be well served to come to oral argument before this court equipped with information and persuasive arguments for why this court need not take action to ensure law enforcement's compliance with state law and its own internal policies. Discipline is one such piece of information. Without knowing such information, the state does nothing meaningful to quell concerns when the state police so brazenly ignore their own policies and, more importantly, the law. My own independent review of the record does not reveal that Barbero and Vayan were ever disciplined in any manner for their actions.

These observations about the police officers' actions in this case are far from irrelevant. Courts must often consider whether there are policies or other incentives or

---

tremens, characterized by hallucinations, mental confusion, and disorientation." L. Trevisan et al., "Complications of Alcohol Withdrawal: Pathophysiological Insights," 22 Alcohol Health & Rsch. World 61, 61 (1998), available at https://pmc.ncbi.nlm.nih.gov/articles/PMC6761825/pdf/arh-22-1-61.pdf (last visited July 7, 2025).

disincentives in place to ensure that state officials conform their conduct to law. As we have recently noted, courts regularly struggle to acquire reliable information about whether existing constitutional or prophylactic rules are working (or new ones are desirable) to deter misconduct that violates not only the rights of those who become suspects, targets or criminal defendants, but the rights of all of us who are members of a free society. Indeed, this is not the only case in this court year in which we have had to grapple with this challenge. For example, in *State* v. *Haynes*, 352 Conn. 236, A.3d (2025), we were asked to devise a new prophylactic rule under the state constitution for instances in which the state wants to use an illegally obtained statement to impeach the trial testimony of a defendant in a criminal case. See id., 250–51 and n.10. Although we declined, over a spirited dissent; see id., 264 (*Ecker, J.*, concurring and dissenting); to overrule a prior case from this court addressing this question; see *State* v. *Reid*, 193 Conn. 646, 480 A.2d 463 (1984); we observed that "[t]he legitimacy of prophylactic constitutional rules derives from their necessity. . . . There is general agreement that courts should use their authority to devise prophylactic rules cautiously and to tailor them to be as narrow as possible to accomplish their purpose. . . . Courts create prophylactic rules when they determine that the risk of a constitutional violation is sufficiently great [such] that simple case-by-case enforcement of the core right is insufficient to secure that right. . . . This court has demonstrated that it will devise and implement additional prophylactic rules, beyond those that federal law compels, when we are persuaded that they are necessary to protect the constitutional rights within our state." (Citations

omitted; internal quotation marks omitted.) *State* v. *Haynes*, supra, 250–51 n.10.

Our consideration of whether to adopt a new or modified prophylactic rule under state law is not the only instance in which we will often look to whether there are other incentives or disincentives in place to ensure that state officials will conform their conduct to law. To cite one example, when we are faced with the question of whether to extend absolute immunity to state actors for actions taken in the course of their duties, one relevant consideration is whether there are sufficient checks in place that discourage state officials from violating the law. See, e.g., *Mitchell* v. *Forsyth*, 472 U.S. 511, 522–23, 105 S. Ct. 2806, 86 L. Ed. 2d 411 (1985) ("[M]ost of the officials who are entitled to absolute immunity from liability for damages are subject to other checks that help to prevent abuses of authority from going unredressed. Legislators are accountable to their constituents . . . and the judicial process is largely self-correcting: procedural rules, appeals, and the possibility of collateral challenges obviate the need for damages actions to prevent unjust results." (Citation omitted.)); *Khan* v. *Yale University*, 347 Conn. 1, 28–29, 295 A.3d 855 (2023) ("[b]ecause absolute immunity removes the threat of private defamation actions in order to incentivize witnesses to participate candidly and willingly in the proceeding, it is crucial that there be some strong deterrent, such as the threat of a perjury prosecution, against abuse of the privilege by the giving of untruthful testimony").

In sum, there are various circumstances in which courts look for policies or other rules that may ensure

a public official's compliance with state law, short of this court stepping in to ensure such compliance. It is incumbent on the state to assure this court that there are mechanisms in place to ensure compliance with state law and to protect an individual's constitutional rights. In this case, we have no assurances that existing measures are sufficient to deter the type of reckless indifference exhibited by the police officers. Such assurances could have included, for example, the fact that the officers were disciplined as a result of their violation of state police policy or that their reckless indifference may have jeopardized their qualified immunity. The state cannot simply rely on the absence of *any* relevant evidence or an agreed on measure of determining the prevalence of similar violations to avoid the development of a new rule.

Here, there is no question that the police officers were aware that the defendant had been drinking heavily at the time of the incident and was in the throes of alcohol withdrawal during the interrogation. Indeed, the trial court found as much. For example, and in addition to the evidence already discussed, when asked at the probable cause hearing whether the defendant appeared to have been drinking, Gonzalez stated that "[the defendant] did have . . . [a] smell or . . . odor emanating from him that smelled like it could [be an] . . . alcohol-like substance, yes." At trial, Gonzalez acknowledged that he remembered testifying at the probable cause hearing that the defendant had smelled like alcohol. Vayan testified at the probable cause hearing that, during the police interrogation, the defendant told him that "there was a lot of alcohol

consumption involved" on the night of the murder. Vayan also testified that the defendant was intoxicated "earlier" in the interrogation and that he could smell alcohol on the defendant during the interrogation. Barbero testified at trial that the defendant had "tremors" and "[s]hakes" during the interview but that the police did not "test his breath or . . . blood" to determine if he was intoxicated.[4]

It is eminently reasonable for the public to expect law enforcement to treat suspects within its custody in a professional and humane manner, without needlessly endangering their health and well-being. At a bare minimum, law enforcement must follow its own policies when it comes to caring for suspects within its custody. In the present case, the police officers did neither, and we have no assurances that their blatant breach of protocols was an isolated incident. I am deeply concerned that the officers acted with reckless indifference to the defendant's health and that the state did not find these actions troubling enough to even inquire of the state police regarding any disciplinary action taken or additional training that these officers may have received as a result of their actions. As a consequence, we have not been offered any of the necessary assurances this court needs to determine whether the acts of these officers were isolated in nature, rather than a part of a more widespread, systemic problem that might require this court to take action.

---

4. Although the defendant's blood alcohol concentration was not tested, the victim's postmortem blood alcohol concentration was 0.393 according to a toxicology report.

Nevertheless, because the trial court properly suppressed any statements made by the defendant during the approximately thirteen hour station house interrogation, we can expect that this ruling should serve to deter future misconduct. Accordingly, I agree with the majority that the judgment of conviction should be affirmed.

I would, however, hope and expect that it would not take the trial court's exclusion of the statements that the defendant made during the interrogation to incentivize law enforcement to follow clear law and policy. Put differently, I do not consider this a paradigmatic case that our system worked. One of the purposes of the exclusionary rule is to deter police misconduct, but not only in cases that end up being litigated. If we were to suspect that the exclusion of evidence in a case that went to trial did not sufficiently deter misconduct, we might conclude that a particular aspect of our system is not working, requiring, in an appropriate case, that we devise a more robust rule.

For the foregoing reasons, I respectfully concur.

APPENDIX B — MEMORANDUM OF THE SUPERIOR COURT, JUDICIAL DISTRICT OF DANBURY, FILED DECEMBER 2, 2022

SUPERIOR COURT
JUDICIAL DISTRICT OF DANBURY

DOCKET NO. DBD-CR190159438-S

STATE OF CONNECTICUT

v.

JAMES MAHARG

Filed December 2, 2022

MEMORANDUM OF DECISION

The state filed a two-count information charging James Maharg with the crimes of Murder, in violation of Section 53a-54a of the Connecticut General Statutes, and Tampering with Evidence, in violation of Section 53a-155 of the Connecticut General Statutes. The charges arose from events that occurred on March 19, 2019.

The panel heard testimony and the arguments of counsel over the course of approximately eight days. During the trial, numerous exhibits were received into evidence. The panel has considered all the evidence presented in this case from both the state and the defendant. In reaching its conclusions, the court has: (1) considered the evidence received during trial, including

evaluating the credibility of the witnesses; (2) assessed the weight, if any, to be given specific evidence and measured the probative force of conflicting evidence; (3) reviewed all exhibits, relevant statutes, and case law; and (4) drawn such inferences from the evidence or facts established by the evidence that it deems reasonable and logical. The court's credibility determinations were based upon the conduct, demeanor, and attitude of the witnesses. See *Lapointe* v. *Commissioner of Corrections,* 316 Conn. 225, 268-71, 112 A.3d 1 (2015). Additionally, any other evidence on the record not specifically mentioned in this decision that would support a contrary conclusion, whether such evidence was contested or uncontested by the parties, was considered and rejected by the court. See *State* v. *Edmonds,* 323 Conn. 34 (2016).

FINDINGS OF FACT

I. The Crime Scene

Based on the evidence presented and the reasonable and logical inferences drawn therefrom, the panel unanimously finds the following facts: on March 20, 2019, at approximately 2:00 a.m., the defendant called 911 from the landline in his home stating "My husband is dead. My husband is dead." During the 911 call (Ex. 2), the defendant told the dispatcher that he and his husband (hereinafter "victim") had been drinking heavily and that the victim fell and hit his head on a kitchen cabinet. The defendant described the victim's injury as a "big gash," and said that he "knew it was bad because he was bleeding heavily." The defendant claimed that he was

able to stop the bleeding, and that they had gone to bed around 9 p.m.

The defendant told the dispatcher that he had just awoken and gone downstairs, where he found the victim on the floor. The defendant said that he did not know how the victim got downstairs. When asked if he thought the victim was "beyond help," the defendant responded, "Yes. He's cold." The defendant also told the dispatcher that he and the victim had been having financial issues prior to this incident and that the victim was "cold as a rock."

The call was then transferred to the Connecticut State Police Dispatch Center. During the second portion of the 911 call (Ex. 5), the defendant reiterated that he and the victim had been drinking and that the victim fell and hit his head on a kitchen cabinet. The defendant stated that he put paper towels on the "big gash" on the victim's head and that the victim asked for a wet cloth. The defendant told the dispatcher that he was covered in blood and that there was blood everywhere in the house. He asked the dispatcher, "Can you make him okay? He's cold." The defendant also asked "What am I going to do? What are you going to do with me? Are you going to take me?" and commented, "He's dead. Stupid drinking."

At 2:02 a.m., the police and an ambulance were dispatched to 99 Church Street in Sherman, Connecticut, which was the defendant's and victim's residence. Paramedic Justin Walsh testified that he was the first to arrive on scene at approximately 2:18 a.m. Upon entering the house, Walsh saw that the victim was naked and lying

prone at the base of the stairs. Walsh testified that the victim did not have any vital signs, was in full rigor mortis, and was cold to the touch. Walsh explained that while rigor mortis sets in within a few hours of death, it takes approximately four hours for a body to turn cold. Walsh concluded, based upon his training and experience, that the victim had died several hours earlier.

Walsh saw that the victim had one large and two smaller head wounds that were filled with clotted blood. (Ex. 3-30). Walsh testified that the biggest head wound was much larger and deeper than he had ever seen from a simple fall. Walsh explained that although head wounds bleed profusely, there was no blood on the victim's head or body and no blood on the floor under where the victim lay. Walsh observed that the victim had lividity on the back of his body, indicating that he had died on his back rather than face down, as he was found. (Ex. 3-23). Walsh also saw that the victim's left leg was stiff and raised off the floor, leading Walsh to conclude that the victim was moved after rigor mortis set in. Walsh explained that if the victim had died in the location where he was found his leg would be flat on the floor. (Ex. 3-22).

The defendant told Walsh that he and the victim had been drinking and that the victim fell and hit his head on a cabinet. The defendant initially told Walsh that he did not know how the victim got downstairs, but then said that he heard the victim fall down the stairs. Finally, the defendant told Walsh that he and the victim used to have millions of dollars but that they lost everything. Now, the defendant explained, he and the victim spent much of their time drinking and fighting with one another.

Appendix B

Connecticut State Police ("CSP") Trooper Isaiah Gonzalez testified that he arrived at the defendant's residence at approximately 2:20 a.m. Gonzalez identified several photographs taken in the early morning hours of March 20, 2019, including two that depicted the defendant wearing a blue denim shirt that was covered in large blood stains. (Ex. 3-5 and 3-6). Gonzalez testified that the blood stains, which were primarily located on the defendant's left sleeve and collar area, appeared to be dry.

CSP Trooper Laurence Gregg testified that on March 20, 2019, at approximately 2:00 a.m., he was dispatched to a medical call on Church Street. When Gregg arrived, he asked the defendant some questions about what had occurred. Much of the conversation between Gregg and the defendant was recorded by an audio recorder in Gregg's pocket. (Ex. 9). The defendant told Gregg that the victim fell and hit his head on a cabinet, that he (the defendant) used paper towels to clean the blood off the kitchen floor, and that it was the victim's blood on his shirt. The defendant also stated the victim angrily asked the defendant to give him a wet cloth, after which the defendant helped the victim upstairs to bed. The defendant told Gregg that there was no one in the house other than the defendant, the victim, and their dogs.

At approximately 4:00 a.m., Trooper Gonzalez drove the defendant to Troop A in Southbury. When they arrived, CSP Detectives Jared Barbero and Ed Vayan interviewed the defendant over a period of 13-hours.[1] At

1. After a hearing, the panel found that the defendant's interview at the police barracks was conducted in violation of the

approximately 5:00 p.m., the defendant was transported to Waterbury Hospital to be treated for alcohol withdrawal. CSP Trooper Matthew Geddes accompanied the defendant in the ambulance.

Geddes testified that approximately two hours after they arrived at the hospital, he was standing in the hall seven to ten feet away from the defendant when he heard the defendant say, "Where is my husband?" Geddes testified that the defendant spoke clearly in a normal, conversational tone and seemed sober when he made the statement. Geddes documented the defendant's comment but did not respond. Thirty minutes later, Geddes heard the defendant say, "My life is ruined. I murdered Tom. How do I tell people I killed my husband?" Again, Geddes documented the defendant's statements but did not respond.[2] Geddes explained that prior to making these comments, the defendant had received medical treatment and eaten a turkey sandwich.

5th and 14th Amendments to the United States Constitution. The panel granted a motion to suppress, and the state was precluded from using the statements made during the interview for any purpose, including for cross-examination should the defendant decide to testify. Accordingly, the panel did not consider the content of the interview in reaching its decision.

2. The panel did not suppress the spontaneous statements the defendant made within Geddes' earshot because they were neither made in response to police interrogation nor the result of coercive police conduct. Nonetheless, the panel unanimously concluded that the evidence established the defendant's guilt beyond a reasonable doubt, even in the absence of these statements.

Appendix B

II. Crime Scene Investigation

Several members of the Western District Major Crimes, Crime Scene Unit ("WDMC") testified about processing the crime scene. The testimony established that they arrived on scene at approximately noon. WDMC took photographs and a video of the scene. They also collected swabs of blood from various locations throughout the house for DNA testing.

Of note, WDMC observed and/or recovered the following items: in the living room, they recovered two blankets, a robe, and paper products, all of which contained blood. In the kitchen, there was blood on several areas of the floor, most of which was smeared from having been wiped up. There was blood on the dog's water dish and on the lower portion of a door that leads from the kitchen to the exterior of the house. There were several paper towels, a five-inch serrated knife, and an eight-and-a-half-inch chefs knife in the sink, and a washcloth and paper towels in the garbage can under the sink, all of which were saturated with blood. There was also a blood smear on the wall between the kitchen and the stairwell.

As previously described, the victim was lying prone just outside the kitchen at the bottom of the stairway that led to the bedrooms. The victim was naked; there was very little blood on his body. While there was clotted blood within the lacerations on the victim's head, there was no blood around the injuries or under the victim's body. There was one small bloodstain on the bottom stair next to where the defendant lay.

Upstairs, WDMC observed a swipe of blood on the handrail, a small bloodstain above the handrail, and a bloodstain on the top stair. They also observed a significant amount of blood in the master bedroom, including saturation stains on the bed, the comforter, and the pillows. There was also blood on the trim outside of the bathroom and on the edge of the bathroom sink. In the guest room, WDMC observed saturation stains on the bed, the pillow, and a washcloth next to the pillow, and blood on the bathroom sink.

WDMC recovered two cell phones from the residence. The defendant's cell phone was recovered from the master bedroom; the victim's phone was recovered from the living room. An analysis of the defendant's telephone records showed that the defendant made two phone calls on March 20, 2019, at 12:57 a.m. – one to Kohl's and one to a friend that went unanswered. These calls were made one hour before the defendant called the police from his landline.

III. Blood Spatter Expert

CSP Captain Mark Davison testified as an expert on bloodstain pattern analysis. From his examination of the evidence and testimony, it can reasonably be inferred:

1. The altered, wiped, and perimeter blood stains in the kitchen and at the top of the stairwell demonstrated that someone attempted to clean up the blood in these areas.

2. The absence of blood on the floor surrounding the victim indicated that the victim neither sustained his injuries nor bled in this area.

3. The livor mortis on the victim's buttocks and other posterior areas was not consistent with the position in which the victim was found indicating that the victim was moved post-mortem.

4. The available data and scene context suggested that there was an initial bloodshed event followed by additional bloodshed event(s) with intervening movement between locations.

5. In the kitchen, there was one elliptically shaped bloodstain on the dog's water dish and two on the lower portion of the kitchen door. The directionality of the stains indicated that they were deposited in a downward direction. These bloodstains are consistent with spatter, meaning that they resulted from airborne blood droplets that were created when external force was applied to liquid blood.

6. The 4-and-1/2-foot by 1-and-1/2-foot perimeter stain on the floor in the kitchen indicated that a large pool of blood was removed from this area. The comparatively large area of bloodstaining was suggestive of the origin of a bloodshed event.

7. In the second-floor master bedroom, there were small, elliptical bloodstains on the lower right side of the exterior wall to the bathroom that were

consistent with spatter stains. The directionality of the stains indicated that they were deposited in a downward direction. There were small circular blood stains on the floor adjacent to that wall. Those bloodstains were consistent with a cast-off pattern, meaning that they resulted from blood drops released from an object due to its motion.

8. The presence of bloodstains on both the first floor and the second floor indicated that the victim moved or was moved between floors.

9. The absence of visible bloodstaining on most of the victim's body and on the majority of the stairs indicated that his injuries were covered during movement, his skin was shielded from blood by clothing, and/or he was cleaned.

10. The bloodstains on the bathrobe recovered from the living room suggested that the victim was wearing the robe at some point during a bloodshed event.

IV. Medical Examiner

Dr. Jacqueline Nunez is a board certified forensic and anatomical pathologist who has been employed by the State of Connecticut Office of the Chief Medical Examiner as an Associate Medical Examiner since 2018. She was previously employed by the New York City Office of the Chief Medical Examiner as a forensic pathology fellow. Dr. Nunez performed the autopsy on the victim on March 21, 2019, at approximately 9:30 a.m. Prior to that date, she had performed over 1,000 autopsies.

Appendix B

Dr. Nunez testified at length regarding the victim's pre- and post-mortem injuries, the victim's toxicology report, and the manner and cause of death. Dr. Nunez was also cross-examined at length regarding the victim's prior medical history. The focus of the cross-examination was what, if any, effect it would have had on her determination regarding the manner and cause of death had she reviewed the history before issuing the death certificate.

With respect to pre-mortem injuries, Dr. Nunez found that the victim had chop wounds to the top of his head and blunt impact injuries to the head, neck, torso, and extremities. The largest of the chop wounds was positioned horizontally across the victim's parietal scalp and measured approximately 4 and 3/8 inches long by 1/2 of an inch wide by 1/4 of an inch deep. Dr. Nunez explained that the scalp was avulsed at the site of the injury, meaning that the scalp had pulled away from the skull.

Also on the parietal scalp was a second horizontal wound that measured 1 and 1/4 inches long by 1/4 of an inch wide by 3/ 8 of an inch deep. Located to the anterior of the largest of the two wounds were a 1/2 of an inch by 1/8 of an inch curvilinear laceration and a superficial 1/4 of an inch by 1/16 of an inch vertical laceration. While the skull was not fractured, there was subscapular hemorrhaging of the frontal and parietal scalp.

Dr. Nunez determined that the head injuries were consistent with chop wounds. Dr. Nunez explained that the center of the largest wound showed signs of blunt

force trauma while the edges of the injury were smooth and straight. Dr. Nunez determined that the injury was consistent with having been caused by an object that had a sharp edge and weight such as a hatchet or ax. Dr. Nunez did not believe that the wounds were consistent with falling into a cabinet or a table due to their horizontal orientation, the number of injuries, the proximity of the injuries to one another, and their location on the top of the victim's head. Dr. Nunez explained that because the head is round, a person who falls would not suffer multiple injuries so near to one another as the victim did in this case. Rather, Dr. Nunez concluded that the injuries were a result of repeated impact applied to the same area. Dr. Nunez explained that the head wounds were so significant that the bleeding would not have stopped without sutures.

Dr. Nunez noted that the victim had multiple pre-mortem contusions and abrasions all over his body including on his head, tongue, abdomen, left elbow, left wrist, left knee, left calf, right forearm, right shin, and right toe.

With respect to post-mortem injuries, Dr. Nunez documented several orange brown abrasions to the victim's forehead, nose, cheek, neck, shoulder, chest, knee, and thigh. Dr. Nunez explained that these types of injuries can occur from something rubbing against the victim's skin after his death. The victim's lumbar spine was fractured in the pelvic region. The lack of soft tissue hemorrhaging meant the break occurred post mortem.

Dr. Nunez testified that the victim had a fatty liver consistent with excessive alcohol usage. At the time of death, the victim's blood alcohol level was a .393 (or .466 in the vitreous fluid of the eye), which Dr. Nunez explained was not necessarily high for someone who chronically abuses alcohol. The victim's blood also showed a reading of 8.9 milligrams per deciliter of methanol which is an alcohol often found in solvents; it is also found in small amounts in commercially produced alcoholic beverages. (Ex. 11). However, Dr. Nunez testified that the amount of methanol in the victim's system would have had to have been at least double to be significant.

Dr. Nunez also testified that the victim had livor mortis on various areas of his body, including on his buttocks, the back of his head, the back of his shoulder, his genitalia, and his right frontal scalp. Dr. Nunez explained that liver mortis occurs approximately four to six hours after death and, if the body is moved during that time, the livor mortis can move, as well. The fact that the victim's body displayed livor mortis both on the front and back of his body indicated that he was moved after he was deceased.

Finally, Dr. Nunez testified that the victim's internal organs all appeared pale and that the livor mortis, although dispersed throughout both sides of the victim's body, was scant. Dr. Nunez explained that these findings are consistent with a loss of blood.

Dr. Nunez conclusively ruled out suicide explaining that the chop wounds on the top of the victim's head were inconsistent with having been self-inflicted. She also

ruled out an accidental death due to the appearance, proximity, number, and location of the wounds. Moreover, while the liver damage may have made it more difficult for the victim's blood to clot, Dr. Nunez concluded that neither alcohol, alcoholism nor any of the victim's other pre-existing medical concerns were the cause of his death. Instead, Dr. Nunez determined that the victim's manner of death was homicide, the cause of death was chop wounds to the head, and the mechanism of death was exsanguination. Dr. Nunez explained that the victim could have died within minutes of the injuries, but that it also may have taken several hours for him to bleed to death.

V. Defendant's Statement

On March 21, 2019, Detective Barbero went to Waterbury hospital to speak with the defendant; this was done at the defendant's request. When Barbero entered the room, he set up video and audio recording equipment. During the conversation, the defendant stated that while they were arguing the victim fell toward him. The defendant said that he pushed the victim away causing him to fall into the kitchen cabinet. The defendant then told Barbero that the victim was unstable and hypothesized that the victim might have fallen outside and hit his head on a rock. The defendant suggested that Barbero should test the rock and a hatchet to determine if there were blood on them.

VI. The Defense

The defendant called Dr. Mark Taff as his only witness. Dr. Taff has been board certified in anatomical and forensic pathology since 1988 and licensed to practice medicine in New York State since 1981. He has held multiple public positions including Chief Medical Examiner for Rockland County, New York, from October of 2008 through October of 2012. Dr. Taff also has multiple academic affiliations including positions at Mr. Sinai School of Medicine and Lehman College, City University of New York. Dr. Taff is now a consultant and has testified over 600 times in the courts of Connecticut, New York, and New Jersey in both civil and criminal cases. Prior to completing his initial report, Dr. Taff reviewed Dr. Nunez's autopsy report, the victim's toxicology report, and approximately 1,200 pages of the victim's medical records.

Dr. Taff described the six-stage framework that he testified should govern all death investigations. These include: (1) assembling historical information on the decedent; (2) reviewing crime scene documentation; (3) performing the autopsy; (4) obtaining laboratory analysis of samples taken during the autopsy; (5) preparing the autopsy report; and (6) preparing a death certificate with the cause and manner of death. Dr. Taff criticized all but one (stage 2) of Dr. Nunez's work.

Dr. Taff produced two reports for the defense, both of which became full exhibits. His first report was dated October 3, 2022 (Ex. V). Dr. Taff's first report concluded: "The immediate cause of [the victim's] death was due to

acute cardiorespiratory failure (cardiac dysrhythmia) due to acute and chronic alcoholism associated with liver encephalopathy, delirium tremens and pancytopenia and hypertensive cardiovascular disease.

"Blunt force impact-related scalp lacerations and hemorrhage, rheumatoid arthritis, depression and recent methanol usage and history of prescribed use of a rolling walker to ambulate and prevent falls, tobacco, marijuana and cocaine usage and financial problems were significant associated conditions contributing to [the victim's] death." (Ex. V, p.8).

Dr. Taff's second report was dated October 27, 2022 (Ex. W) and was prepared after he had been provided with what he described as "over 300 pages of Dr. Nunez's testimony."[3] Dr. Taff testified that his review of Dr. Nunez's testimony "enlightened" him. In Dr. Taff's second report he explained, "It is now my opinion that the immediate cause of [the victim's] death was exsanguination due to multiple superficial scalp lacerations on top of head due to blunt force impact trauma. In the

3. On October 31, 2022, the state filed its "Notice Regarding Potential Sequestration Violation" in which it took the position that providing Dr. Taff with Dr. Nunez's trial testimony constituted a violation by the defense of the court's October 11, 2022, sequestration order. The State did not seek preclusion of Dr. Taff's testimony but leave of court to cross-examine him on the circumstances of his receipt of said testimony as well as any revisions or modifications of his initial opinion made after reviewing Dr. Nunez' testimony. The court granted such relief without objection from the defense.

greater scheme of things, it really does not matter if [the victim] sustained the scalp wounds from being struck in the head with either a blunt instrument or chopping weapon. The end result of the impacts to the head were bleeding scalp lacerations leading to death by exsanguination." (Ex. W, p.2)

Dr. Taff's second report also noted that the victim's injuries "would not have caused instantaneous loss of consciousness. [The victim] would have been able to move about the scene which was confirmed by the transfer of blood from one area of his home to another." (Ex. W, p. 2).

Despite his agreement with the victim's cause of death, Dr. Taff disagreed with Dr. Nunez's conclusive determination that the victim's manner of death was a homicide. He opined, "It is further my opinion that the manner of death should have been classified as undetermined (homicide due to scalp wounds inflicted by another(s) or accident due to scalp wounds inflicted by self)." (Ex. W, p.3). Dr. Taff explored the possibility of selfharm as the decedent's manner of death but acknowledged in his testimony that he "gave more credence to the scalp wounds after reading her (Dr. Nunez's) testimony" and further acknowledged under cross-examination that the evidence in this case was "consistent with homicide."

Finally, the defense asked Dr. Taff if the victim's head wounds could have been caused accidentally as a result of the victim "fumbling around and striking himself?" Dr. Taff responded: "It's possible. Maybe one or two of these

wounds. I can't tell you . . . I would, I would find it kind of unusual that someone is going to stand up and bang his head on a low ceiling multiple times. Is it possible? Anything is possible. To get these wounds on the top, he would have to dive head-first like into a pool to get that. But if you dive head-first, why would you have four wounds. You should only have one scalp wound unless he jumped into a pool four times which I think is kind of stretching it."

ANALYSIS

Based upon the evidence presented, the panel finds that the defendant used a weighted and sharp object to repeatedly bludgeon the victim over the head, a vital area of the body. The assault on the victim was not a discrete incident. This was established by the blood staining, blood spatter, and evidence of multiple bloodshed events that occurred in different locations of the house. Moreover, the assault on the victim was not a single blow. The defendant inflicted multiple severe and ultimately fatal injuries to the victim who suffered a significant and obvious loss of blood from his wounds. This was readily established by the saturated blood stains in both the master and guest bedrooms, the large pools of blood (that the defendant attempted to conceal) on the kitchen floor, the blood in the living room, and the blood on the victim's robe.

Notwithstanding the victim's unmistakable need for immediate medical intervention, the defendant failed to call for help despite the evidence that the defendant had the ability to make a call from either his home or

his cellular telephone, both of which were operational.[4] Instead, the defendant inflicted the victim's injuries and then allowed the victim to bleed to death. The precise time of death cannot be ascertained. However, it is a reasonable inference from the evidence – blood throughout the house and the fact that the victim died from exsanguination – that the victim died a prolonged death.

The defendant next attempted to conceal and fabricate evidence. He tampered with the crime scene, attempting to remove blood from the kitchen floor, the upper landing of the stairs, and from the victim's head and body. The defendant moved the victim's body to the bottom of the stairs after the victim was already deceased as evidenced by the facts that: (1) there was no blood under the victim's body showing that he did not die in that location; (2) the victim's leg was stiff and raised off the ground showing that the defendant moved his body to that location after the victim was already in a state of rigor; and (3) the victim had lividity on the posterior of his body indicating that he was on his back after death, rather than on his stomach as he was found when police arrived.

---

4. "From the defendant's cell phone records, the jury reasonably could have found both that it was possible to obtain a cell phone signal strong enough to allow the defendant to place a call for emergency help . . . and that the defendant did not place such a call. . . . We have often noted that 'it can be inferred that, if the defendant has caused a grievous wound that could cause the victim's death if not treated promptly, the failure to summon that treatment is consistent with an antecedent intent to cause death.'" *State* v. *Otto* 305 Conn. 51, 71-72 (2012) quoting *State* v. *Sivri*, 231 Conn. 115, 129, 646 A.2d 169 (1994).

In addition, based upon the evidence presented, the panel can infer that the defendant attempted to stage the scene to make it appear as if the victim fell down the stairs, which is what the defendant told the paramedic, i.e., that he heard the victim fall down the stairs. Notably, the victim did not have any pre-mortem injuries to support this assertion and, absent one blood drop on the top stair and one blood drop on the bottom stair, there was no blood on the remaining stairs as would have been the case if the victim fell downstairs while alive. Significantly, the victim did have extensive *post*-mortem injuries. Dr. Nunez noted several orange-brown abrasions to the victim's forehead, nose, cheek, neck, shoulder, chest, knee, and thigh. Dr. Nunez explained that these types of injuries can occur from something rubbing against the victim's skin after his death. In addition, the victim's lumbar spine was fractured in the pelvic region. The lack of soft tissue hemorrhaging meant the break occurred post-mortem. This evidence further supports the finding that the victim was moved after death.

The defendant provided implausible explanations to the 911 operator, the paramedic, and to the responding officers regarding how the victim allegedly sustained his injuries, i.e., that the victim fell and hit his head either on a cabinet or on a rock.[5] The panel finds that none of these

5. The cumulative force of the defendant's actions and inactions support the inference that the defendant had the requisite intent to kill the victim. This includes, but is not limited to, the evidence that the defendant: (1) used a sharp-edged weapon to inflict the victim's injuries which caused substantial blood

explanations are supported by the evidence. Both Dr. Taff and Dr. Nunez agree that the victim's injuries were not the result of a fall.

Finally, the panel considered Dr. Taff's testimony regarding alternative scenarios that may have led to the victim's death, including his opinion that the victim may have harmed himself. Given the location, number, and severity of the victim's wounds, the panel does not credit Dr. Taff's hypothesis that self-inflicted wounds could have been the cause of the victim's death. Even the defendant did not claim during his conversations with the 911 operators, the paramedic, or the police that the victim harmed himself. The panel has also considered all of Dr. Taff's observations, opinions, and criticisms regarding Dr. Nunez's approach to the death investigation and the conclusions she drew therefrom. This included Dr. Taff's view that Dr. Nunez should have considered and placed more weight on the victim's medical history and Dr. Taff's disagreement with Dr. Nunez's determination that the victim suffered a chop wound. This panel finds Dr. Taff's criticisms and conclusions unpersuasive.

CONCLUSION

Based upon the evidence presented, the panel finds that the state has proven beyond a reasonable doubt each

---

loss, (2) failed to seek medical help while the victim bled out, (3) dragged the victim's body, and (4) lied to the 911 dispatcher, the paramedic, and the responding police officers regarding the cause of the victim's injuries. See *State* v. *Francis*, 195 Conn. App. 113, 130 (2019).

of the elements of Murder, in violation of Section 53a-54a of the Connecticut General Statutes, and Tampering with Evidence, in violation of Section 53a-155 of the Connecticut General Statutes.

Dated this 2nd day of December 2022.

/s/ Robin Pavia
Pavia, J.

/s/ Tracy Dayton
Dayton, J.

/s/ M Medina Jr
Medina, J.

APPENDIX C — MEMORANDUM OF THE SUPERIOR COURT, JUDICIAL DISTRICT OF DANBURY, FILED OCTOBER 31, 2022

SUPERIOR COURT
JUDICIAL DISTRICT OF DANBURY
AT DANBURY

DOCKET NO. DBD-CR-19-0159438-S

STATE OF CONNECTICUT

v.

JAMES C. MAHARG

Filed October 31, 2022

MEMORANDUM OF DECISION

The defendant, James Maharg, stands charged with Murder, in violation of Connecticut General Statute § 53a-54a, and Tampering with Evidence, in violation of Connecticut General Statute § 53a-155 in connection with an incident that is alleged to have occurred on March 19, 2019.

On August 12, 2022, the defendant filed a "Motion to Suppress Statements." In his motion, the defendant argues that his statements made on March 20, 2019, to the police at the Troop A Barracks, and later during his hospitalization at Waterbury Hospital were obtained in violation of the Fourth, Sixth, and Fourteenth Amendments of the United

States Constitution and Article I, Sections Seven, Eight, and Nine, of the Constitution of the State of Connecticut.[1]

In reaching its conclusions, the court has: (1) considered the evidence received at the hearing and, where relevant, during trial, including evaluating the credibility of the witnesses;[2] (2) assessed the weight, if any, to be given specific evidence and measured the probative force of conflicting evidence; (3) reviewed all exhibits, relevant statutes, and case law; and (4) drawn such inferences from the evidence or facts established by the evidence that it deems reasonable and logical. The court's credibility determination was based upon the conduct, demeanor, and attitude of the witnesses. See *Lapointe* v. *Commissioner of Corrections,* 316 Conn. 225, 268-71, 112 A.3d 1 (2015). Additionally, any other evidence on the record not specifically mentioned in this decision that would support a contrary conclusion, whether such evidence was contested or uncontested by the parties, was considered and rejected by the court. See *State* v. *Edmonds,* 323 Conn. 34 (2016).

For the reasons set forth below, the Motion to Suppress is GRANTED in part and DENIED in part.

---

1. The defendant did not move to suppress his statements pursuant to the Fifth Amendment of the U.S. Constitution. The panel believes that the omission was likely a scrivener's error and included Fifth Amendment considerations in its analysis, as well.

2. The parties agreed that the motion to suppress would be heard mid-trial and that some of the testimony and exhibits admitted during the State's case-in-chief, e.g., the testimony of Connecticut State Police Trooper Isaiah Gonzalez, would also be relevant, and considered in relation, to the motion to suppress.

Appendix C

FINDINGS OF FACT

I. The Defendant's Residence

Based on the evidence presented and the reasonable and logical inferences drawn therefrom, the panel finds the following facts: on March 20, 2019, at approximately 2:00 a.m., the defendant called 911 from the landline in his home stating "My husband is dead. My husband is dead." During the 911 call (Ex. 2), the defendant told the dispatcher that he and his husband had been drinking heavily and that his husband fell and hit his head on a kitchen cabinet. The defendant said that his husband bled a lot, but that he (the defendant) had been able to stop the bleeding, after which they had gone to bed. The defendant told the dispatcher that he had just awoken and gone downstairs, where he found his husband on the floor in the foyer. When asked if he thought his husband was "beyond help," the defendant responded, "Yes. He's cold." The defendant also told the dispatcher that he and his husband had been having financial issues prior to this incident and that his husband was "cold as a rock."

At 2:02 a.m., an ambulance and the police were dispatched to the defendant's home at 99 Church Street, Sherman, Connecticut. Paramedic Justin Walsh testified that he was the first to arrive on scene at approximately 2:18 a.m. When Walsh arrived, he could hear the defendant yelling and dogs barking. Upon entering the house, Walsh saw that the defendant's husband (hereinafter "the decedent") was naked and lying prone at the base of the stairs. Walsh testified that the decedent did not have any

vital signs, was in full rigor mortis, and was cold to the touch. Walsh explained that while rigor mortis sets in within a few hours of death, it takes approximately four hours for a body to tum cold. Walsh therefore concluded, based upon his training and experience, that the decedent had died several hours earlier.

Walsh saw that the decedent had one large and two smaller head wounds that were filled with clotted blood. (Ex. 3-30). Walsh explained that although head wounds bleed profusely, there was no blood on the decedent's head or body and no blood on the floor under where he lay. Walsh observed that the decedent had lividity on the back of his body, indicating that he had died on his back rather than face down, as he was found. (Ex. 3-23). Walsh also saw that the decedent's left leg was stiff and raised off the floor, leading Walsh to conclude that the decedent was moved after rigor mortis set in because his leg would otherwise be flat on the floor. (Ex. 3-22). Walsh testified that, as he examined the decedent, the defendant was intermittently pacing, yelling, and screaming. At one point, the defendant tried to pull Walsh away from the decedent.

Connecticut State Police ("CSP") Trooper Isaiah Gonzalez testified that he arrived at the defendant's residence at approximately 2:20 a.m. Gonzalez explained that the defendant made several spontaneous statements in his presence, including that he and the decedent have been drinking a lot since they lost their business and that they had been drinking earlier that evening.

CSP Trooper Laurence Gregg also testified that on March 20, 2019, at approximately 2:00 a.m., he was dispatched to a medical call on Church Road in Sherman. When Gregg arrived, he asked the defendant some questions about what had occurred. The defendant repeated his version of how the decedent's injuries had occurred. The defendant also told Gregg that there was no one in the house other than the defendant, the decedent, and their dogs.

During their conversation, the defendant repeatedly asked Gregg for a glass of water. Gregg testified that he could not get the defendant water because the kitchen appeared to be a crime scene. Gregg also testified that his Sergeant ordered that he should not let the defendant go anywhere or wash up. Gregg understood his Sergeant's order to mean that the defendant should not be allowed into the crime scene, but that the defendant was not under arrest and was free to leave.

At approximately 4:00 a.m., Sergeant Broski ordered Trooper Gonzalez to take the defendant to Troop A in Southbury. Gonzalez testified that the defendant was not under arrest and that he voluntarily agreed to accompany Gonzalez. However, while driving to Troop A, the defendant said that he wanted to go back to his husband. When Gonzalez told him that he could not take him back to the house, the defendant asked to get out of the car saying that he would walk back. Gonzalez told the defendant he could not let him out on the side of the road because it was dangerous and because the defendant was intoxicated.

II. The Interrogation[3]

On March 20, 2019, at approximately 4:40 a.m., a police officer escorted the defendant into an interview room. An audio and video recorder were activated before the defendant entered the room. From the recording, it appears to be a windowless cinderblock room with one door. There was a table and three chairs in the room. The defendant was placed in a chair with his back to the recording equipment. Because only one of the two cameras in the room was operational, when the defendant was seated only the back of his head was visible.[4]

Initially, there were two officers in the room with the defendant: Trooper Gonzalez and CSP Detective Jared Barbero. During the first hour, Gonzalez and Barbero engaged the defendant in conversation about his dogs, the areas in which he and the decedent had resided, the display business that he and the decedent owned, the

---

3. The parties jointly requested that the court review, prior to trial, the approximately 13-hour audio and videotaped interrogation and read the accompanying transcript. On October 13, 2022, the recording and transcript of the interrogation were admitted as State's Exhibits 26 and 27, respectively. The *Miranda* waiver form was admitted as State's Exhibit 28. These three exhibits were admitted solely for the purpose of the suppression hearing, despite being marked consecutively to the State's trial exhibits.

4. The defendant moved to suppress his statement claiming that it was not recorded as required by CGS § 54-1o. The panel considered and rejected this argument. Although only one camera in the interview room was operating at the time of his interrogation, the entirety of the interview was captured by both audio and video recording equipment.

defendant's relationship with the decedent, and the fact that the defendant had consumed a significant amount of alcohol the prior evening. The defendant repeatedly asked what they were doing, why they were engaging in "chit-chat," stated that he neither wanted to nor felt capable of discussing the incident and asked when they would be done. T. 2, 7, 22, 24, 27, 33, 38, 43-4, 57-8.[5] Barbero commented that the defendant was "shaking heavily." T. 46. The defendant was visibly agitated and stated that he was "going to get sick." T. 55.

At approximately 5:40 a.m., CSP Detective Ed Vayan[6] entered the interview room. A few minutes later, Barbero told the defendant that they had to "read this paperwork." T. 61, The defendant responded, "I can't read." Barbero replied, "No. I know. I'm just going to read it to you." Vayan added, "The quicker we get this done, the quicker we can get you out of here." The defendant was thereafter read his *Miranda* rights. Although he was asked once whether he understood these rights, the defendant was not given an opportunity to answer this inquiry as questioning immediately began regarding the decedent's death. The defendant explained that the decedent fell in the kitchen, hit his head on a cabinet, and started to bleed profusely. The defendant said that he initially did not call 911 because he thought he successfully stopped the bleeding. The defendant said that he helped the decedent upstairs to bed after which they both went to sleep. Several hours

5. References to the interview transcript will be marked as "T." followed by the transcript page number.

6. Vayan was a detective at the time of this incident. He is now a Sergeant.

later, the defendant awoke to find that the decedent was neither in their bedroom nor in the guest bedroom. He walked downstairs and found the decedent on the floor. The defendant tried to pull the decedent up and discovered that he was cold which prompted the defendant to call 911.

Barbero and Vayan interrogated the defendant for another twelve hours. For the great majority of the interview, the defendant repeated the same version of the events; namely, that the decedent fell and hit his head on the kitchen cabinet, the defendant stopped the bleeding, they went upstairs to bed, and the defendant later found the decedent at the bottom of the stairs.

While the detectives' voices remained conversational throughout almost the entirety of the interview,[7] as the discussion progressed they began confronting the defendant about evidence that contradicted his statement. For instance, when the defendant stated that neither he nor the decedent left the house during the evening, the detectives confronted him with the fact that there was blood discovered in the detached garage. T. 592. When the defendant stated that the decedent's injuries were not the result of a weapon-strike, the detectives confronted the defendant with the fact that a hatchet was found in the garage that appeared to contain traces of blood.[8] T. 591-92.

---

7. There are, in fact, several times throughout the interview when the defendant thanked the detectives for being so nice to him and commented that they had a very difficult job.

8. One of the grounds upon which the defendant moved to suppress his statement was that the detectives falsely claimed to

Eventually, the defendant told the detectives that he pushed the decedent causing him to hit his head on the cabinet. T. 558-57. He also stated that he carried the decedent downstairs from the bedroom and that the decedent was alive when he did so. T. 570-73. While the defendant said that he "must have hit" the decedent, he could not specifically remember doing so. T. 589. After it was repeatedly suggested to him that he used the hatchet to cause the decedent's injuries, the defendant stated, "I must have used the – the hatchet." T. 595-97. When the detectives continued to push the defendant to provide additional specifics, he responded "I'm just agreeing with what you said." T. 606.

During this portion of the interrogation, an approximately 18-minute period, the defendant repeatedly asked to use the bathroom but was not permitted to do so.[9] The detectives indicated that they first wanted the

---

have evidence that they did not have, namely, evidence of blood on a hatchet. It is unclear from the evidence presented whether there was, in fact, blood found on the hatchet. The witnesses seem to contradict one another on this point. However, to the extent that there was blood, it was neither the defendant's nor the decedent's blood and the detectives did not claim anything to the contrary. However, even if they had so claimed, that would not in and of itself render his confession involuntary because law enforcement is permitted to use false evidence ploys during an interrogation. See *State* v. *Griffin*, 339 Conn. 631, 667–68, 262 A.3d 44, 68–69 (2021), cert. denied, 211 L. Ed. 2d 575, 142 S. Ct. 873 (2022). Accordingly, the panel rejects the defendant's argument in this regard.

9. The defendant moved to suppress his statement on the ground that he was denied the use of the bathroom during

defendant to finish telling them how the decedent incurred his injuries. Vayan eventually took the defendant to the bathroom and testified that during this time the defendant turned to Vayan and stated, "When did you know I killed my husband?" T. 629. Vayan was not wearing any recording equipment at this time, but reasonably explained that he would have turned it off in the bathroom in any event to protect the defendant's privacy. When they returned to the interview room, Vayan attempted to memorialize the defendant's question by asking, "James, why – why did you ask me did I know that you killed him? You were just curious?" The defendant replied, "Yeah." The defendant then added, "It's terrible. It's hard to imagine I killed my husband . . . I've told you everything, so I wouldn't hold back. It's something that I don't remember." T. 631. Shortly thereafter, the defendant experienced what was described on the video as a seizure. An ambulance was called, and he was transported to Waterbury Hospital. T. 644-54. Trooper Matthew Geddes, a uniformed patrolman, rode in the back of the ambulance with the defendant. Geddes did not speak to the defendant either in the ambulance or later at the hospital.

III. Waterbury Hospital

The defendant arrived at the Waterbury Hospital Emergency Room at approximately 5:09 p.m. and

---

this period. The detectives took the defendant to the bathroom approximately 11 times over the course of the 13-hour interview. There was only one 18-minute period during which they did not take him immediately upon his request. Under these circumstances, the panel rejects the defendant's argument that he was denied the use of the bathroom.

immediately received medical treatment. Trooper Geddes remained in the hallway approximately seven to ten feet from the defendant the entire time. Geddes stated that the defendant was not restrained in any manner and was not under arrest. Geddes testified that if the defendant had decided to leave the hospital at any point that he would have let him go and then call his (Geddes') supervisor.

At approximately 7:05 p.m., two hours after they arrived at the hospital, the defendant called out, "Where is my husband?" Geddes did not respond but contemporaneously documented the statement. At approximately 7:35 p.m., the defendant stated aloud, "My life is ruined. I murdered Tom. How do I tell people I killed my husband?" The defendant also commented that he would not last one day in jail. Once again, Geddes did not respond but made a contemporaneous note of the statement. Geddes testified that the defendant appeared sober and was speaking clearly when he made these statements. In addition, the defendant had received fluids and had eaten a turkey sandwich approximately 15 minutes prior to making the statements. Nonetheless, the defendant vomited at 7:40 p.m., prompting Geddes to summon medical personnel.

On March 21, 2019, the defendant, who was still at Waterbury Hospital, requested to speak with Detective Barbero. When Barbero arrived, the defendant told him that the victim had an unstable gait and suggested that the victim may have fallen and hit his head on a rock. When Barbero questioned why the defendant was; in substance, changing what he previously told them about the incident, the defendant admitted that he pushed the victim into

the cabinet, but said he did not know if he hit him with a hatchet or a rock, or if the victim simply tripped and hit his head.

The defendant seeks suppression of all statements made at the police department, including those made in the interview room as well as later in the bathroom. He additionally moves to suppress the statements overheard by Geddes while being treated at the hospital later in the night. Although the defendant's motion to suppress references statements made at the police department and later at Waterbury Hospital, the defendant makes no claim regarding the subsequent statements made to Barbero on May 21, 2019, when Barbero went to the Waterbury Hospital to speak with the defendant at the defendant's request. This statement was admitted into evidence absent objection (Ex. 32).

LEGAL DISCUSSION

The defendant asserts that he was in custody from the moment he left his home and that a reasonable person in his position would not feel free to leave. The defendant further asserts that the police ignored his repeated requests to terminate the interview, interviewed him for an unreasonably prolonged period, lied to him about evidence they claimed to have, failed to properly record the interview, denied him the right to use the bathroom, and denied him medical care although he was exhibiting signs of severe alcohol withdrawal. As a result, the defendant claims that his statements were not voluntarily made.[10]

10. The defendant also moved to suppress his statement pursuant to Rule 403 claiming that its admission would be

The State responds that the defendant was not under arrest and that he was free to leave the interview at any time. The State maintains that even if the panel were to find that the defendant was in custody at the time of the interview, Detective Barbero twice read the defendant his *Miranda* rights and the defendant understood and waived those rights. The State also asserts that the defendant did not request to terminate the interview, repeatedly reengaged the officers thus extending the duration of the interview, and that the police were truthful about the evidence, properly recorded the interview, provided the defendant with multiple bathroom breaks, and did not deny him medical care.

I. Fifth Amendment *Miranda* Claim

A. Custodial Interrogation

As recognized by the United States Supreme Court, "[a]ny police interview of an individual suspected of a crime has certain coercive aspects to it, but "[o]nly those interrogations that occur while a suspect is in police custody, however, heighten the risk that statements obtained are not the product of the suspect's free choice." (Citations omitted; internal quotation marks omitted.) *J.D.B.* v. *North Carolina,* 564 U.S. 261, 269-70, 131 S.Ct.

---

more probative than prejudicial. The panel has considered the defendant's argument in this regard and finds it to be without merit. As previously noted, the panel also rejected the defendant's arguments that the interview was not properly recorded, that the misrepresentation about evidence – to the extent that one occurred – was improper, and that he was denied the use of the bathroom.

2394, 180 L.Ed.2d 310 (2011); see also *State* v. *Castillo,* 329 Conn. 311, 323, 186 A.3d 672 (2018); *State* v. *Mangual,* 311 Conn. 182, 191, 85 A.3d 627 (2014). In recognition of the inherent coercive nature of a custodial interrogation, the United States Supreme Court in *Miranda* adopted a set of prophylactic measures designed to safeguard the constitutional guarantee against self-incrimination. *Miranda* v. *Arizona,* 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966); see also *Howes* v. *Fields,* 565 U.S. 499, 507, 132 S.Ct. 1181, 182 L.Ed.2d 17 (2012).

Therefore, prior to subjecting a suspect to police questioning, the suspect "must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed." *Miranda* v. *Arizona,* supra, 384 U.S. 444; see also *J.D.B.* v. *North Carolina,* supra, 564 U.S. 269. "It is well established that the prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination." *State* v. *Donald,* 325 Conn. 346, 355, 140 A.3d 200 (2017).

In order to be entitled to *Miranda* warnings, a defendant bears the burden of establishing that he was in custody when he made the statements, and that he made the statements in response to police questioning. Id. Thus, two threshold conditions must be satisfied to invoke the warnings constitutionally required by *Miranda:* (1) the defendant must have been in custody and (2) the defendant

must have been subjected to police interrogation. Id. The initial issue is therefore whether the defendant was in custody during the interview at the Connecticut State Police Barracks on March 20, 2019, and at the hospital later that day.

The United States Supreme Court has recognized that "'custody' is a term of art that specifies circumstances that are thought generally to present a serious danger of coercion." *Howes* v. *Fields,* supra, 565 U.S. 508-09. The initial inquiry in determining whether a person is in custody for *Miranda* purposes is to learn whether ". . . in light of the objective circumstances of the interrogation. . . a reasonable person would have felt he or she was not at liberty to terminate the interrogation and leave." (Citations omitted; internal quotation marks omitted.) Id., 509; see also *State* v. *Castillo,* supra, 329 Conn. 323.

A court must begin the custody analysis "by asking whether a reasonable person would have thought he was free to leave the police encounter at issue. If the answer is yes, the *Miranda* inquiry is at an end; the challenged interrogation did not require advice of rights." *State* v. *Mangual,* supra, 311 Conn. 194 n.12. The Connecticut Supreme Court has emphasized that "the test for whether an interrogation was custodial is an objective one. The subjective views harbored by either the interrogating officers or the person being questioned are irrelevant. . . . The test, in other words, involves no consideration of the actual mindset of the particular suspect subject to police questioning." (Citation omitted.) Id., 198 n.13.

However, if a reasonable person would not have thought he was free to leave, additional analysis would be required because not every seizure constitutes custody for·the purposes of *Miranda.* In that case, "a court must ask whether, in addition to not feeling free to leave, a reasonable person would have understood his freedom, of action to have been curtailed to a degree associated with formal arrest. . . . Only if the answer to the second question is yes was the person in custody for practical purposes . . . and entitled to the full panoply of protections prescribed by *Miranda.*" Id., 194-95 n.12. After all, "[a]ny lesser restriction on a person's freedom of action is not significant enough to implicate the core fifth amendment concerns that *Miranda* sought to address." Id., 194-95.

In order to determine whether a reasonable person would have felt he or she was free to terminate the interrogation and leave, a court must examine "all the circumstances surrounding the interrogation." (Internal quotation marked omitted.) *Howes* v. *Fields,* supra, 565 U.S. 509. Relevant factors include "(1) the nature, extent and duration of the questioning; (2) whether the suspect was handcuffed or otherwise physically restrained; (3) whether officers explained that the suspect was free to leave or not under arrest; (4) who initiated the encounter; (5) the location of the interview; (6) the length of the detention; (7) the number of officers in the immediate vicinity of the questioning; (8) whether the officers were armed; (9) whether the officers displayed their weapons or used force of any other kind before or during the questioning; and (10) the degree to which the suspect was isolated from friends, family and the public." *State* v.

Mangual, supra, 311 Conn. 197; *State* v. *Castillo,* supra, 329 Conn. 325; see also *Howes* v. *Fields,* supra, 565 U.S. 509.

For the reasons described below, the panel finds that the evidence in this case demonstrates that the defendant, was not initially in custody. However, as the interview progressed, the defendant's freedom of action was curtailed to a degree associated with formal arrest and he was in custody for *Miranda* purposes.

To begin, Gonzalez credibly testified that the defendant willingly accompanied him in the police car to the police barracks, and there is no evidence to suggest that the defendant was restrained in any manner during the ride. The fact that Gonzalez did not return the defendant to the house, which was an active crime scene, when the defendant said he wanted to be with the decedent and did not let him out on a dark road at 4:00 a.m. so he could walk home does not change that analysis. See *State* v. *Edwards,* 299 Conn. 419, 434, 11 A.3d 116 (2011) (defendant not in custody where he voluntarily accompanied police to the station).

The defendant similarly was not in custody during the initial portion of the interview. The fact that the interview took place in a secure portion of the police barracks does not, in and of itself, render the interview custodial. See *State* v. *Turner,* 267 Conn. 414, 440, 838 A.2d 947 to (mere fact that defendant was interviewed behind closed door at police station does not entitle defendant to *Miranda* warnings), cert. denied, 543 U.S. 809, 125 S.Ct. 36, 160

L.Ed.2d 12 (2004); see also *State* v. *Angel C.*, 137 Conn. App. 84, 95-7, 46 A.3d 1020 (although interview occurred in a closed interrogation room at police department located up one flight of stairs with limited ingress and egress to the general public does not lead to a conclusion the defendant was in custody), cert. denied, 307 Conn. 916, 54 A.3d 180 (2012).

However, even a voluntary encounter can transform into a custodial interrogation based on the nature and circumstances of the questioning. Here, two police officers interviewed the defendant over the course of 13 hours. Both officers were armed, although they did not display their weapons or use force of any kind before or during questioning. The interview took place in a windowless room with the defendant seated furthest from the door, which was closed for the great majority of the interview.

While the defendant was not handcuffed, he was not permitted to leave the room unaccompanied much less to leave the police barracks. His cell phone was taken from him, and he was not permitted to make a phone call despite repeated requests to do so.

Most significantly, the police never told the defendant that he was free to leave and did not tell the defendant that he was not under arrest until several hours into the interview. T. 227; *State* v. *Garrison*, 213 Conn. App. 786, 816, 278 A.3d 1085 (2022) (fact that police did not explain to defendant that they were not detaining him in any way until more than two hours after their first encounter significant factor in custody determination);

State v. *Hoeplinger,* 206 Conn. 278, 288, 537 A.2d 1010 (1988) (defendant in custody where he was interrogated for more than thirteen hours and never told he was free to leave). Barbero acknowledged that the defendant *did* ask to leave the interview but said that he never attempted to do so. See *State* v. *Ostroski,* 186 Conn. 287, 294, 440 A.2d 984 (defendant in custody where he was questioned for more than three hours and police repeatedly refused his requests to leave or to stop questioning), cert. denied, 459 U.S. 878, 103 S.Ct. 173, 74 L.Ed.2d 142 (1982). Moreover, Barbero testified that they were in the process of obtaining a search warrant for the defendant's clothing so they would not have let him leave, in any event.

An objective analysis of the totality of the circumstances leads the panel to conclude that a reasonable person in the defendant's position would not have believed that he was free to leave. See *State* v. *Lewis,* 333 Conn. 543, 560, 217 A.3d 576 (2019). The panel finds that under the totality of the circumstances all the objective facts are consistent with an interrogation environment in which a reasonable person would not have felt free to terminate the interview and leave. Accordingly, the defendant was entitled to the protections of *Miranda.*

B. Miranda Violation

The Supreme Court has recently reiterated the well-established legal principles regarding the admissibility of confessions. "[T]he use of an involuntary confession in a criminal trial is a violation of due process. . . . [T]he test of voluntariness is whether an examination

of all the circumstances discloses that the conduct of law enforcement officials was such as to overbear [the defendant's] will to resist and bring about confessions not freely self-determined. . . . The ultimate test remains . . . [i]s the confession the product of an essentially free and unconstrained choice by its maker? If it is, if he has willed to confess, it may be used against him. If it is not, if his will has been overborne and his capacity for self-determination critically impaired, the use of his confession offends due process. . . . The determination, by the trial court, whether a confession is voluntary must be grounded [in] a consideration of the circumstances surrounding it. . . .

"Factors that may be taken into account, upon a proper factual showing, include: the youth of the accused; his lack of education; his intelligence; the lack of any advice as to his constitutional rights; the length of detention; the repeated and prolonged nature of the questioning; and the use of physical punishment, such as the deprivation of food and sleep." *State* v. *Griffin,* 339 Conn. 631, 667–68, 262 A.3d 44, 68–69 (2021), cert. denied, 211 L. Ed. 2d 575, 142 S. Ct. 873 (2022). The Connecticut Supreme Court has recognized that "there is considerable overlap between the factors that courts should consider in determining whether a defendant is in custody for *Miranda* purposes and the factors that courts should consider in determining whether a defendant's statements were voluntary." *State* v. *Jackson,* 304 Conn. 383, 421, 40 A.3d 290 (2012).

"[C]oercive police activity is a necessary predicate to the finding that a confession is not 'voluntary' within the meaning of the Due Process Clause of the Fourteenth

Amendment." *Colorado* v. *Connelly,* 479 U.S. 157, 167, 107 S.Ct. 515, 93 L.Ed.2d 473 (1986); *State* v. *Griffin,* supra, 339 Conn. 668. However, the voluntariness inquiry centers upon *both* the conduct of the law enforcement officials in creating pressure, and the suspect's capacity to resist that pressure. See, e.g., *Mincey* v. *Arizona,* 437 U.S. 385, 399-401, 98 S.Ct. 2408, 57 L.Ed.2d 290 (1978) (confession not voluntary where police interrogation of hospitalized suspect overwhelmed his free will). "It is well settled that [t]he state bears the burden of proving the voluntariness of the defendant's confession by a preponderance of the evidence." *State* v. *Griffin,* supra, 339 Conn. 668.

In considering the totality of the circumstances, the panel concludes that the State has failed to prove that the defendant's statements at the police barracks were voluntary. Approximately one hour into the interview, the detectives administered the defendant's *Miranda* rights. Generally, "[t]he provision of adequate *Miranda* warnings is significant . . . because it has a bearing on both sides of the voluntariness calculus: It bears on the coerciveness of the circumstances, for it reveals that the police were aware of the suspect's rights and presumably prepared to honor them. And . . . it bears [on] the defendant's susceptibility, for it shows that the defendant was aware that he had a right not to talk to the police." (Internal quotation marks omitted.) *State* v. *Griffin,* supra, 339 Conn. 672, quoting 2 W. Lafave et al., Criminal Procedure (4th Ed. 2015) § 6.2(c), p.712.

While not fatal to the question of the voluntariness, the adequacy of the *Miranda* warnings in this case is

somewhat problematic. To begin, the detectives did not await the defendant's response to the question as to whether he understood his *Miranda* rights. Instead, when Barbero asked the defendant if he understood his rights, Vayan interrupted and did not give the defendant a chance to answer. Both Vayan and Barbero then told the defendant that they only had a few questions for him and directed him to sign the form stating that he understood, even though he just advised them that he was unable to read. Moreover, the defendant was shaking so violently that he was unable to sign his name. Vayan, in response; told the defendant he could "just make [his] mark" and Barbero offered to help the defendant sign. Nonetheless, based on a review of the audio and video recording of the interview, it appears that the defendant understood his rights and voluntarily agreed to speak with the detectives.

However, after the interview began, the defendant continually indicated that he wished to stop answering questions. That request was not honored by the detectives. Specifically, shortly after the detectives read the defendant his *Miranda* rights, the defendant advised the detectives that he felt sick and did not feel able to talk to them. T. 79, 98, 106, 124, 159, 295, 358, 412, 417. A few minutes later, the defendant stated, "I'm not going to be able to make it any longer." T. 98. The detectives understood that the defendant was advising them that he was unable to continue answering questions as evidenced by Barbero's response: "We'll hurry up and get you out of here." T. 98. The transcript is riddled with the defendant's desire to go home. T. 295, 355, 356, 375, 377, 386, 393, 412, 460. The defendant's pleas became more urgent as the interview

progressed and the defendant implored the police "[p]lease let me go home. Please let me go home." T. 393. "I don't want to tell the story anymore," the defendant repeated. Barbero replied, "[l]et's push through it." "No. I can't," the defendant responded. T. 417. Later the defendant again reiterated "I want to get out of here." "Well, that's not happening," Vayan retorted. T. 526

During the course of the 13-hour interview, the detectives responded to the defendant's myriad requests to terminate the interview in various ways including telling him: "You're doing fine" (T. 124); "We're almost done" (T. 159); "We're wrapping this up once I can explain everything" (T. 357); "Let's push through it" (T. 417); and "We're not going to be done." (T. 601-02).

While some of the defendant's statements indicating his desire to end the interview were perhaps open to interpretation, the panel believes, at a minimum, that his statements "I have nothing else to tell" (T. 295) and "I'm not going to tell you anything else" (T. 358) were clear invocations of his right to cease answering questions. Therefore, the admissibility of the statements obtained from the defendant after he exercised his right to remain silent "depends under *Miranda* on whether his right to cut off questioning was scrupulously honored." (Internal quotation marks omitted.) *Michigan* v. *Mosley,* 423 U.S. 96, 104, 96 S.Ct. 321, 46 L.Ed.2d 313 (1975). "The purpose behind the requirement to 'scrupulously honor the invocation of the right to remain silent is to avoid instances when the police do not honor a decision of a person in custody to cut off questioning either by refusing

to discontinue the interrogation upon request or by persisting in repeated efforts to wear down his resistance and make him change his mind.'" *State* v. *Reynolds,* 152 Conn. App. 318, 354, 97 A.3d 999, 1023–24 (2014) (quoting *Michigan* v. *Mosley,* supra, 423 U.S. 105–106.

"The rule of *Miranda* v. *Arizona,* supra, at 384 U.S. at 473–74, 86 S.Ct. 1602, states: 'Once warnings have been given, the subsequent procedure is clear. If the individual indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease. At this point he has shown that he intends to exercise his Fifth Amendment privilege; any statement taken after the person invokes his privilege cannot be other than the product of compulsion, subtle or otherwise. Without the right to cut off questioning, the setting of in-custody interrogation operates on the individual to overcome free choice in producing a statement after the privilege has been once invoked.'" *State* v. *Griffin,* 77 Conn. App. 424, 451, 823 A.2d 419, 437 (2003), aff'd, 273 Conn. 266, 869 A.2d 640 (2005). Here, the defendant indicated that he wished to stop answering questions. The detectives did not honor that request. Generally, this finding would result in the suppression of the portion of the interview that was conducted after the defendant invoked his right to be silent. However, under the circumstances of this case, an additional issue must be addressed.

II. Fourteen Amendment Claims

Throughout the entirety of the interview, the defendant displayed physical distress. Early on, Detective

Barbero noted that the defendant was violently shaking. This shaking became notably more pronounced as the interview progressed. Additionally, as the day continued the defendant began vomiting at increasing intervals. At the hearing, Barbero, who continued to reference the defendant's condition as an "alleged" medical issue, maintained that he did not believe that the defendant needed medical care despite the defendant's request and acknowledgement that medical care was necessary.

From the outset of the interview, both Barbero and Vayari understood that the defendant had been drinking very heavily at the time of the incident. Barbero and Vayan talked about the defendant's need to sober up and observed the defendant shaking to the point that he could neither hold a cup of coffee steady nor legibly sign his own name to the *Miranda* form. Shortly after receiving his *Miranda* rights, the defendant told Barbero and Vayan that he was going to be sick. T. 79. Vayan responded by handing the defendant a trash can into which to vomit. The defendant described his "severe drinking issue" explaining that he would drink over a bottle of tequila every day. A few hours into the interview, the defendant told Barbero and Vayan, "I need a drink so bad." Barbero responded, "Yeah, I can see the withdrawal all over you." T. 268. The defendant, on multiple occasions, begged for a drink as his shaking simultaneously became more pronounced. T. 291, 295, 316, 356, 386, 397, 453. When Vayan and Barbero tried to get the defendant to eat, he told them that he could not keep anything down and that the only thing that would stop his shaking was a drink. T. 356. "Oh my God, I need a drink so bad," the defendant pled. T. 503. At one point, Vayan

and Barbero discuss the possibility that medication might help with the process of detoxing. The defendant also told Barbero that his current shaking was worse than it had been in a long time despite having been previously treated at the hospital on three separate occasions. T. 456, 476. "I can't stand it, I can't stand this shaking," the defendant said on multiple occasions. T. 497, 510. Shortly thereafter, the defendant began to vomit. T. 514. The detectives responded by putting the defendant in a cell." T. 516.

Once the defendant was brought back into the interview room he told the officers, "I need to go to the hospital to get off this and I need detox." T. 542. "I heed help." T. 549. Vayan responded, "I know you do." T. 549. Despite these colloquies, Barbero and Vayan continued to question the defendant. It was during this period that the defendant, for the first time, admitted that he had been lying and that he had pushed the decedent into the cabinet. T. 564. The questioning continued until 5:10 p.m., when the defendant exclaimed, "Oh my god," and began experiencing a seizure. T. 644. "He's passing out. . . He's going," Barbero is heard saying. T. 646. Thereafter an ambulance was called. When the medics arrived, Barbero immediately told them that the defendant was in "alcohol withdrawal" and indicated that he went "cyanotic," indicating that his skin had turned a bluish color. T. 645, 648, 649. The defendant was then transported to the hospital.

An examination of the totality of the circumstances establishes that the statements extracted from the defendant were in violation of his Fifth and Fourteenth

Amendment rights. First, as noted above, Detectives Barbero and Vayan failed to honor the defendant's myriad requests to terminate the interview. "Without the right to cut off questioning, the setting of in-custody interrogation operates on the individual to overcome free choice in producing a statement after the privilege has been once invoked." *State* v. *Griffin,* supra, 77 Conn. App. 451. More significantly, Detectives Barbero and Vayan disregarded the defendant's obvious and increasingly urgent need for medical care. Under the circumstances of this case, it cannot be said that the defendant's confession at the police barracks was the product of an essentially free and constrained choice. Therefore, the use of his confession for any purpose – including in the State's case-in-chief, for cross-examination, or for rebuttal – offends due process and is precluded.

Finally, the panel must consider the statements made at Waterbury Hospital on May 20, 2019, in the vicinity of Trooper Geddes. To begin, the panel concludes that the defendant was in custody from the time his interrogation started at Troop A on May 20, 2019. However, the custody determination is only the first step in the analysis. The subsequent examination of the circumstances under which these statements were made leads the panel to conclude that the May 20, 2019, spontaneous statements made in the vicinity of Trooper Geddes were freely and voluntarily made.

On May 20, 2019, approximately two hours after he arrived at the hospital, the defendant made two incriminating statements. Prior to doing so, the defendant

had received medical care and had eaten. He was no longer in the police barracks or even in the presence of the detectives who initially interviewed him. While Trooper Geddes was in uniform, there is nothing to suggest that he displayed his weapon or even that he interrogated the defendant in any manner. The defendant was also in a hospital with medical personnel attending to him, rather than in a closed and windowless room in the interior of the police barracks. In fact, the uncontroverted and credible testimony was that Geddes was standing in a hallway seven to ten feet from the defendant when the defendant spontaneously asked where his husband was; Geddes did not respond. Thirty minutes later, the defendant spontaneously stated that he murdered his husband and that he would not last a day in jail. Again, Geddes did not respond. In the absence of coercive police activity, such unprovoked statements cannot be found to be involuntary.

CONCLUSION

The panel finds that, based upon the totality of the circumstances, the State has failed to sustain its burden of proving the voluntariness of the defendant's statements at the police barracks and accordingly grants the defendant's motion to suppress all statements made at the barracks. Furthermore, based upon the duration, repeated requests to terminate the interview and critical medical deterioration of the defendant throughout the thirteen-hour prolonged interview, the panel finds that such statements may not be used in any manner during the course of the present trial. With regard to the motion to suppress the subsequent statements made in the presence

of Office Geddes at Waterbury Hospital, the defendant's motion is denied.

BY THE COURT

/s/ Robin Pavia
Pavia, J.

/s/ Tracy Dayton
Dayton, J.

/s/ M Medina Jr
Medina, J.