FLYNN, C. J., concurring. From the time he was a boy of seven, the defendant experienced psychological problems. Only a week before Vines' death at the hands of the defendant, the defendant had been hospitalized after a failed suicide attempt. He had not taken the medicines prescribed for his mental issues for a few days before the fight in which Vines was stabbed. On the night of the fatal encounter, the defendant had consumed fifteen beers and a quantity of wine, and Vines' cousin, Ms. Robinson, recalled that the defendant and Vines had been drinking heavily at the wedding reception that they all had attended.

It is against this evidentiary backdrop that the jury asked the question: "Is intent established if a reasonable person should have known that his actions could result in death/killing the victim?" Despite clear prior instructions from the court, the question manifested confusion remaining on the part of the jury, which existed about whether the reasonable man standard, applicable to negligent conduct, could be used instead of the specific intentional conduct that the law requires in a murder case, namely, the defendant's conscious objective to cause the death of Vines. In my opinion, the jury should have been told that it could not use such a standard to find the defendant guilty of murder and that to find him guilty, it had to find that he consciously intended to cause Vines' death.

I write separately because I agree with the words of then Chief Judge Dupont in *State v. Fletcher*, 10 Conn. App. 697, 705, 525 A.2d 535 (1987), aff'd, 207 Conn. 191, 540 A.2d 370 (1988) that, "[c]larification of the instructions when the jury or one of its members manifests confusion about the law is mandatory." This is especially true when the crime is murder, and the sentence is sixty years. This is also especially true when, as the state briefed in this case, "there was no dispute that the defendant caused the victim's death. The sole contested issue at trial was whether he had the requisite intent for murder."

If the defendant lacked the conscious intent to cause Vines' death, he could not be guilty of murder. Nevertheless, in this case, if the jury did not find that he had such a specific intent but, instead, believed that a reasonable person in the defendant's shoes should have foreseen that in holding the knife in the manner in which the defendant held it, Vines' death was a likely result, the jury might have found the defendant guilty of murder, while the result warranted by his less culpable mental state would have been to have found him guilty of manslaughter or negligent homicide. On the basis of the evidence of mental illness, the defendant's being under the influence of alcohol and the jury's question,

such a result is not unfathomable.

When asked if he had any objection to the way the court proposed to handle the jury's question, defense counsel simply said "no," thereby offering no objection, while not explicitly agreeing with the court's proposal. The *Golding* rule,[1] permitting appellate review of issues never raised by objection before the trial judge, has been criticized because, by its very nature, the case on appeal becomes something it never was at trial by raising matters that the trial judge did not and could not address for lack of objection. That is true of every case reviewed under *Golding*. However, if we are going to have such a rule, it seems counterintuitive to review an unpreserved issue concerning jury confusion under *Golding* because the trial attorney took no objection but then to deny any relief because the trial attorney took no objection.

I concur in the result, reached by the majority in the present case, but only because it appears to be mandated, and we to be constrained, by our Supreme Court's decision in *State* v. *Fabricatore*, 281 Conn. 469, 481–82, 915 A.2d 872 (2007), in which the court held that a defendant requesting *Golding* review implicitly, by his counsel's acquiescence, may waive a constitutional right to require the state to prove, beyond a reasonable doubt, all necessary elements of the criminal charge against him.

[1] See *State* v. *Golding*, 213 Conn. 233, 239–40, 567 A.2d 823 (1989).